MONTANA LEGISLATIVE HISTORY

Chapter 4 Sp Sess May 19 90

Bill H 2 S _____ Original bill & history ____C

H. Committee on Labor & Employment Relations		S. Committee on Labor & Employment Relations	
Hearing Date(s) May 21	✓ C	Hearing Date(s) May 23	✓ C
May 22	✓ C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out May 22	✓ C	May 24	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Free Conference Committee

May 24 ✓ C

May 25 ✓ C

HOUSE FINAL STATUS

HB 1 INTRODUCED BY THOFT
ALLOW USE OF INMATE LABOR FOR CONSTRUCTION OF A LOW SECURITY HOUSING UNIT AT MONTANA STATE PRISON

5/21	INTRODUCED		
5/21	FISCAL NOTE REQUESTED		
5/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
5/21	FISCAL NOTE RECEIVED		
5/21	FISCAL NOTE PRINTED		
5/22	HEARING		
5/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
5/22	2ND READING PASSED	79	21
5/22	3RD READING PASSED	76	23
	TRANSMITTED TO SENATE		
5/23	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
5/23	HEARING		
5/23	COMMITTEE REPORT—BILL CONCURRED		
5/23	2ND READING CONCURRED	40	10
5/23	3RD READING CONCURRED	40	10
	RETURNED TO HOUSE		
5/25	SIGNED BY SPEAKER		
5/25	SIGNED BY PRESIDENT		
5/25	TRANSMITTED TO GOVERNOR		
5/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 1; EFFECTIVE DATE: 5/30/90		

HB 2 INTRODUCED BY GLASER, HARPER
SEPARATE WORKERS' COMPENSATION UNFUNDED LIABILITY FROM FUTURE BUSINESS

5/21	INTRODUCED		
5/21	FISCAL NOTE REQUESTED		
5/21	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
5/21	HEARING		
5/21	FISCAL NOTE RECEIVED		
5/21	FISCAL NOTE PRINTED		
5/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
5/22	2ND READING PASSED AS AMENDED	82	18
5/22	3RD READING PASSED	79	21
	TRANSMITTED TO SENATE		
5/23	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
5/23	HEARING		
5/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
5/24	2ND READING CONCURRED	36	13
5/24	3RD READING CONCURRED	35	15
	RETURNED TO HOUSE WITH AMENDMENTS		

5/24	FREE CONFERENCE COMMITTEE APPOINTED		
5/24	2ND READING AMENDMENTS NOT CONCURRED	91	3
5/25	FREE CONFERENCE COMMITTEE REPORT NO. 1		
5/25	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	67	33
5/25	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	67	33

SENATE

5/24	FREE CONFERENCE COMMITTEE APPOINTED		
5/25	FREE CONFERENCE COMMITTEE REPORT NO. 1		
5/25	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	1
5/25	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	1

5/29 SIGNED BY SPEAKER
5/30 SIGNED BY PRESIDENT
5/30 TRANSMITTED TO GOVERNOR
6/19 SIGNED BY GOVERNOR
CHAPTER NUMBER 4
EFFECTIVE DATE: 07/01/90 (S1-13, 15, 17, 18, 20-29)
EFFECTIVE DATE: 10/01/90 (THE CHANGE IN THE TAX RATE IN 39-71-2503(1)(A) AND THE AMENDMENT INSERTED AT THE END OF 39-71-2503(1)(A) BY SECTION 16)
EFFECTIVE DATE: 07/01/91 (S14, 19, AND ALL OTHER AMENDMENTS TO 39-71-2503 CONTAINED IN SECTION 16)

HB 3 INTRODUCED BY O'KEEFE
REVISE ALL LOCAL GOVERNMENT SEVERANCE TAX RATES AND CLARIFY DISTRIBUTION AND APPLICABILITY

5/21 INTRODUCED
5/21 REFERRED TO TAXATION
5/21 FISCAL NOTE REQUESTED
5/21 FISCAL NOTE RECEIVED
5/21 FISCAL NOTE PRINTED
5/22 HEARING
DIED IN COMMITTEE

HB 4 INTRODUCED BY O'KEEFE
REVISE ALL LOCAL GOVERNMENT SEVERANCE TAX RATES ON OIL AND NATURAL GAS AND CLARIFY OTHER PROVISIONS OF THE TAX

5/21 INTRODUCED
5/21 REFERRED TO TAXATION
5/21 FISCAL NOTE REQUESTED
5/21 FISCAL NOTE RECEIVED
5/21 FISCAL NOTE PRINTED
5/22 HEARING
DIED IN COMMITTEE

HOUSE BILL NO. 2

INTRODUCED BY GLASER, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT SEPARATING THE LIABILITY OF THE STATE WORKERS' COMPENSATION INSURANCE PROGRAM AND FUND ON THE BASIS OF WHETHER THE LIABILITY ARISES FROM CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, OR ACCIDENTS THAT OCCUR ON OR AFTER THAT DATE; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; AUTHORIZING THE BOARD OF INVESTMENTS TO MAKE LOANS AND TO ISSUE BONDS PAYABLE BY THE EMPLOYER'S PAYROLL TAX TO PAY OFF THE UNFUNDED LIABILITY; CREATING A STATE DEBT AND PROVIDING FOR A TWO-THIRDS VOTE THEREON BY THE LEGISLATURE; PROVIDING FOR INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; CLARIFYING THE STATE FUND'S DUTIES; PROVIDING THAT THE STATE FUND MAY NOT ISSUE BONDS; ENSURING COMPLIANCE WITH THE MANDATE THAT THE STATE FUND SET PREMIUMS FOR NEW BUSINESS AT A LEVEL SUFFICIENT TO ENSURE SOLVENCY; EXTENDING THE WORKERS' COMPENSATION PAYROLL TAX TO JUNE 30, 2020; AMENDING SECTIONS 39-71-2311, 39-71-2314 THROUGH 39-71-2316, 39-71-2321, 39-71-2323, AND 39-71-2501 THROUGH 39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. **Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective, most efficient, and surest way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

INTRODUCED BILL
HB 2

(b) provide that the board of investments may make loans or issue bonds to pay off the unfunded liability whenever the state fund has an inadequate existing or projected cash flow to administer and pay the claims for injuries resulting from accidents that occurred before July 1, 1990; and

(c) extend the payroll tax imposed by 39-71-2503 to the year 2020 and dedicate the tax money first to the repayment of loans and bonds and then to the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased.

NEW SECTION. Section 2. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990. (1) Except as provided in [section 3], premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages

payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

NEW SECTION. Section 3. Loan for initial operating expenses for claims for injuries resulting from accidents that occur on or after July 1, 1990. During the fiscal year beginning July 1, 1990, the state fund may borrow up to $12 million from money deposited under 39-71-2321 in the state fund before July 1, 1990, to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990. Before July 1, 1991, each amount borrowed during that fiscal year must be repaid in full, with

interest at the rate the money would have earned in the pooled investment fund required by 17-6-203. Repayment must be made from premiums based upon wages payable on or after July 1, 1990. Payments must be deposited in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990.

NEW SECTION. Section 4. **Use of payroll tax proceeds -- loans -- bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying loan and bond proceeds given under [section 5] and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from

accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate the money would earn in the pooled investment fund required by 17-6-203. Bonds for the state fund must be workers' compensation bonds issued under [section 5].

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under [section 5] may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

NEW SECTION. Section 5. **Workers' compensation bonds -- loans -- form -- principal and interest.** (1) Subject to the $220 million limit contained in [section 4(2)], after July 1, 1990, the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the

amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at such rate or rates or the method of determining such rate or rates, maturing at such times, not later than June 30, 2020, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of a fiscal agency of the state, as the board of investments shall determine. Any action taken by the board of investments under [section 4] and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance

and payment.

(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board of investments, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) All loan and bond proceeds given to the state fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds.

NEW SECTION. Section 6. **Legislative audit of state fund.** The legislative auditor shall biennially conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for

injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

Section 7. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan ~~is~~ established under 39-71-431 ~~and~~ is in effect. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ~~fund~~ ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of

premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record."

Section 8. Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund a mutual insurance carrier. (1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the reserve requirements set forth in Title 33, chapter 2, part 5, and the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1.

(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that ~~is recognized to exist on the date of passage of this part~~ existed on July 1, 1990. The commissioner of insurance may not, before July 1, 1992, terminate, based on insolvency created by a loan under

[section 3], the state fund's operations relating to the administration and payment of claims for injuries resulting from accidents that occur on or after July 1, 1990.

(3) If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.

(4) The state fund is a state agency and is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2 through 4 and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

Section 9. Section 39-71-2315, MCA, is amended to read:

"**39-71-2315. Management of state fund -- powers and duties of the board.** (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions

of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director."

Section 10. Section 39-71-2316, MCA, is amended to read:

"**39-71-2316. Powers of the state fund -- rulemaking.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more

nor less than self-supporting. Classifications and premium rates may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until ~~the--unfunded--liability-of-the-state-fund-is-eliminated-and~~ adequate actuarially determined reserves are ~~determined~~ set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund."

Section 11. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The loan and bond proceeds given to the state fund under [sections 4 and 5] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 12. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in state fund -- payment of dividends. ~~If~~ Subject to the provisions of 39-71-2316(9), if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus, ~~such liabilities--to-include-necessary-reserves,-which~~ and if the

excess may be ~~divided~~ refunded safely, then the state fund may declare a dividend. ~~in-the-manner-as-the~~ The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience ~~of~~ each individual employer during the dividend year."

Section 13. Section 39-71-2501, MCA, is amended to read:

"39-71-2501. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~labor--and industry~~ revenue provided for in ~~2-15-1701~~ 2-15-1301.

(2) "Employer" has the meaning set forth in 39-71-117.

(3) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(4) "State fund" means the state compensation mutual insurance fund.

(5) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(6) "Tax account" means the workers' compensation tax account created by 39-71-2504."

Section 14. Section 39-71-2502, MCA, is amended to read:

"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and ~~is--projected--to~~ it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden

of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Therefore, all employers who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability."

Section 15. Section 39-71-2503, MCA, is amended to read:

"39-71-2503. Workers' compensation payroll tax -- penalty. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to ~~0.3%~~ 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. In each regular session of the legislature following [the effective date of this section], the legislature must, if necessary, change the tax rate to ensure that the tax plus projected deposits in the workers' compensation bond account created by 39-71-2504 from sources other than the tax will, during

the life of all then outstanding loans made and bonds issued under [sections 4 and 5], raise at least 110% of the amount necessary to pay the annual service on all outstanding loans and bonds. The department must report past and projected future tax proceeds to the board of investments, which shall consider the report and make recommendations to the legislature with respect to the tax rate and the amount necessary for debt service.

(b) The tax is due and payable following the end of each calendar quarter, commencing with the quarter ending September 30, 1987.

(c) The tax must be paid to and collected by the department. The department shall prepare appropriate returns to be filed by each employer or insurer with the payment of the tax.

(d) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

(e) Taxes not paid when due bear interest at the rate of 1% a month. The employer shall also pay a penalty equal to 10% of the amount of the delinquent tax.

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against

employers subject to the tax.

(3) Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122 regarding deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 16. Section 39-71-2504, MCA, is amended to read:

"39-71-2504. Workers' compensation tax account. (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation bond account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation bond account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation bonds issued under [sections 4 and 5] and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers'

compensation tax account must be credited to the tax account within the workers' compensation tax account and are is statutorily appropriated, as provided in 17-7-502, to the department state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. Loans given to the state fund under [sections 4 and 5] may not be repaid out of the workers' compensation bond account."

Section 17. Section 10, Chapter 664, Laws of 1987, is amended to read:

"Section 10. Effective date -- termination. This act is effective on passage and approval and terminates June 30, ~~1991~~ 2020."

NEW SECTION. Section 18. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 19. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 20. Codification instruction.

[Sections 1, 2, and 4 through 6] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, and 4 through 6].

NEW SECTION. Section 21. **Requirements for approval of state debt.** Because [this act] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [this act]. If [this act] is not approved by the required vote, [this act] is void.

NEW SECTION. Section 22. **Effective dates -- applicability.** (1) [Sections 1 through 14 and 16 through 23] are effective July 1, 1990.

(2) [Section 15] is effective October 1, 1990, and applies to wages payable on or after July 1, 1990.

NEW SECTION. Section 23. **Termination.** [Sections 1 through 5, 11, and 13 through 16] terminate June 30, 2020.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0002, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act separating the liability of the state worker's compensation insurance program and fund on the basis of whether the liability arises from claims for injuries resulting from accidents that occurred before July 1, 1990, or accidents that occur on or after that date; establishing separate funding and accounts for claims represented by the unfunded liability and claims represented by new business; authorizing the board of investments to make loans and to issue bonds payable by the employer payroll tax to pay off the unfunded liability; creating a state debt and providing for a two-thirds vote thereon by the legislature; providing for increased legislative oversight of the state fund; clarifying the state fund's duties; providing that the state fund may not issue bonds; ensuring compliance with the mandate that the state fund set premiums for new business at a level sufficient to ensure solvency; extending the workers' compensation payroll tax to June 30, 2020.

ASSUMPTIONS:

1. State Fund:
   a. State Fund must change its computerized billing and claims management system to accommodate the provisions of the proposed law and the separation of old versus new claims.
   b. Under present law, the State Fund will raise rates by 24.34% effective July 1, 1990 to retire the unfunded liability by June 30, 1997.
   c. Under the proposed law and per the direction of the actuary, the State Fund will raise rates by 7% effective July 1, 1990. The State Fund predicts approximately a 5% premium rate increase to develop sufficient claims reserves for the new claims plus an additional 1%-2% premium rate increase to amortize the initial loan authorized in section 3 of the proposed law.
   d. State Fund will incur additional cost associated with rulemaking in order to comply with section 8(4) and section 10(6) of the proposed law.
2. Department of Revenue:
   a. Total wages and salaries subject to the employer's payroll tax are estimated as follows: $4,427,666,667 (FY90), $4,597,038,200 (FY91), and $4,772,888,702 (FY92).
   b. The employer payroll tax rate will be 0.3% for taxes collected through September 30, 1990 and 0.28% beginning October 1, 1990.
   c. Employers will file one report for both withholding and workers compensation payroll tax.
   d. Approximately 13,000 new filers will be added to the register of employers for withholding taxes.
3. Board of Investments:
   a. Projected growth of the payroll subject to the employer payroll tax is 3.83% per year.
   b. Beginning cash balance for the separate fund representing the unfunded liability will be $65 million.
   c. Principle amount of the initial bond levy will be $150 million.
   d. The rate of interest for the proposed bond levy will be 7.5% per annum.

W. David Darby DATE 5/21/90
W. DAVID DARBY, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

W E Glaser DATE May 21, 90
BILL GLASER, PRIMARY SPONSOR

Fiscal Note for HB0002, as introduced
HB 2

FISCAL IMPACT:

COMBINED AGENCIES	FY91 Current Law	FY91 Proposed Law	Difference
EFFECT ON REVENUES			
-- General Fund	$ 0	$ 473,204 (3)	$ 473,204
-- State Fund	124,643,777 (2)	107,284,708 (4)	(17,359,069)
-- Payroll Tax	13,782,430	12,871,707 (5)	(910,723)
-- Sale of Bonds	0	150,000,000	150,000,000
Total Revenues	$138,426,207	$270,629,619	$132,203,412
EFFECT ON EXPENDITURES			
-- Personal Services	$5,419,936	$5,749,364 (6)	$329,428
-- Operating Expenses	3,319,761	3,447,053	127,292
-- Debt Service (1)	0	1,000,000 (7)	1,000,000
-- Capital Outlay	125,784	174,474	48,690
Total Expenditures	$8,865,481	$10,370,891	$1,505,410
NET EFFECT			
-- Contribution to Unfunded Liability & New Claims:	$129,421,746	$260,258,728	$130,698,002
FUND INFORMATION:			
-- General Fund:	$12,347 (2)	$485,551	$473,204
-- State Special Revenues:	13,782,430	12,398,503	(910,723)
-- W.C. Bonds	0	150,000,000	150,000,000
-- Federal Revenues:	126,633 (2)	126,633	126,633
-- Proprietary Funds:	124,504,797	110,006,748	(17,359,069)
Total Funds:	$138,426,207	$270,629,619	$132,203,412

Notes:

1. Represents the debt service for the proposed revenue bonds. Includes Board of Investment fees for administering the proposed bonds.
2. Currently proprietary rates include general fund and federal revenues which will be transferred to the Dept. of Labor & Industry during the FY91 turnaround process.
3. The proposed law does not provide for the payment of collection cost with payroll tax proceeds. Unless the proposed law is amended, the collection cost associated with the payroll tax would be paid through general funds.
4. Assumes a FY91 State Fund premium rate increase of 7%.
5. Assumes a decrease in payroll tax from 0.3% (FY90) to 0.28% (FY91)
6. Includes State Fund, Dept. of Revenue and additional audit fees.
7. Includes [illegible] payment on the initial loan authorized in section 3 of the proposed law.

LONG-EFFECTS OF LEGISLATION:

1. Dept. of Revenue projects initial mobilization and implementation cost of $144,970 during FY91. In FY92 the collection of the employer payroll tax by the Dept. of Revenue should be fully implemented at an annual cost of approximately $328,234 per fiscal year.

2. The State Fund will not be required to include the unfunded liability in the computation of premium rates. Consequently State Fund premium rates should be substantially less than projected under current law.

3. The proposed revenue bonds create a thirty (30) year debt obligation for the State of Montana.

4. Employers will continue to pay the payroll tax for approximately thirty (30) years.

5. Attached is a projected cash flow schedule for the proposed revenue bonds.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments will continue to pay the payroll tax as required by the proposed law at the lesser rate of 0.28%.

TECHNICAL NOTES:

1. Section 2 state, " .....premiums paid to the state fund based upon wages payable before July 1, 1990....." Workers' compensation premiums are based on wages paid, not payable. This same language is found in section 22(2).

2. Section 4 does not allow for administrative costs associated with the collection of the payroll tax to be paid from the payroll tax proceeds. Unless section 4 is revised to include administrative costs, the Dept. of Revenue would have to fund this effort from another source.

3. Section 6 requires the Legislative Auditor to allocate the audit and evaluation costs between the different claim periods. Currently, the Office of Legislative Auditor allocates the hourly audit cost to the agency. The agency, in turn, allocates audit cost among its component programs, funds and accounts. The proposed law represents a change to the auditor's current procedures for charging audit cost.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - 2nd SPECIAL SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIR RUSSELL, on May 21, 1990, at 2:00 p.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Attorney, Legislative Council
John MacMaster, Attorney, Legislative Council
Terri Dore, Secretary

Announcements/Discussion: None

HEARING ON HOUSE BILL 2

Presentation and Opening Statement by Sponsor:

Rep. Bill Glaser, House District 98, testified that HB 2 provides a funding method to pay the unfunded liability. The $300 million debt cannot be retired under the present plan. This bill restructures the debt over the next 20 to 30 years and sets the payroll tax at .28 percent. It also allows for a reporting system to determine how well the restructuring is working and provides for a report to each subsequent legislature to determine if any adjustment to the system is necessary. The bill has strong rights for public input and legislative oversight and provides that the fund be administered according to sound business practices. Exhibit 1 is a bill summary prepared by staff outlining the basic purposes of the bill. Exhibit 2 is the results of a survey conducted by the Workers' Compensation Division.

Testifying Proponents and Who They Represent:

Rep. Jerry Driscoll, House District 92
Rep. Hal Harper, House District 44
Ben Havdahl, Executive Vice President, Montana Motor Carriers Association (MMCA)
Keith Olson, Executive Director, Montana Logging Association (MLA)
Dave Lewis, Executive Director, State Board of Investments

Proponent Testimony:

Rep. Driscoll stated that in the 1987 legislative session when workers' compensation was addressed, workers' benefits were cut by at least 25 percent. The private insurance companies and the self-insurers received an immediate benefit because they did not have an unfunded liability. During the last regular legislative session, the fund was moved to the Department of Administration for administrative purposes and called the State Mutual Insurance Company. This bill would impose a lower payroll tax than is currently used for one year and then the rate would be set as needed. The present payroll tax will sunset on July 1, 1990. The state fund is required by law to notify all employers thirty days in advance of any rate increase. He asked that the committee consider an amendment providing for an exemption to this provision. This bill is the most painless way to fix the problem.

Rep. Harper testified that constituents have expressed one common theme which is that everything possible must be done to get Montana's economy moving. One of the biggest problems is the unfunded liability. It is a millstone that threatens to drown our economy. The last special session band-aided the fund with a $20 million appropriation. In his opinion, this bill is the most painless way to fix the problem.

Ben Havdahl stated that his organization supports the concept outlined in HB 2 for establishing supplemental funding of the unfunded liability of the state fund. MMCA supported the assessment of .3 percent tax on all employers in Montana when it was enacted and their position has not changed. They support the issuance of $220 million in bonds for the repayment of the liability of the fund. MMCA is fully aware of the increased premium needed for the unfunded liability if the alternative outlined in HB 2 is not enacted.

Keith Olson testified that workers' compensation insurance is a major cost of doing business in the logging profession. Their rate is currently 37 percent which equates to about $740 per employee per month. Another major rate increase would be difficult to absorb and the present rate is adequate due to legislative reforms and an aggressive logging safety program. Their support for the payroll tax concept is not without reservation because they empathize with those that feel they are being forced to retire a debt that is not theirs. On the other hand, the MLA is seriously considering an alternative workers' compensation program and may leave the state fund. Should they elect to do so, they believe it is only fair that they continue to help retire the state fund's debt. He urged the committee's support of HB 2.

Dave Lewis spoke only to the bonding portions of the bill which empowers the Board to issue the debt to refinance the

unfunded liability. The language in the bill would provide a marketable bond. However, they are concerned with page 6, line 2 of the bill that defines the process to be used when selling the bonds. The Board asked that "shall" be changed to "may". They are prepared to sell the bonds in good faith and could be in a position to consider short term financing. However, there are rare circumstances when bonds could not be sold and the Board did not feel it should be bound to make a loan to cover the unfunded liability. In fact, the Board of Investments only manages funds for other agencies and can only lend the money to prudent investors.

Testifying Opponents and Who They Represent:

Jim Tutwiler, Public Affairs Manager, Montana Chamber of Commerce
Roger McGlenn, Executive Director, Independent Insurance Agents Association
Dennis Burr, Montana Taxpayers Association
Alec Hansen, Executive Director, Montana League of Cities and Towns
George Wood, Executive Secretary, Montana Self-Insurers Association
Riley Johnson, National Federation of Independent Businesses
Gene Vucovich, City/County Manager, Anaconda-Deer Lodge County and a board member of the Montana Municipal Insurance Authority
Bridget Holland, Montana Retail Association, Montana Hardware & Implement Association and the Montana Tire Dealers Association
Bruce Moerer, Montana School Boards Association
John Lahr, Montana Power Company

Opponent Testimony:

Jim Tutwiler presented written testimony (Exhibit 3) opposing HB 2 and the manner in which the bill addresses the unfunded liability problem. The organization thought the solution proposed in HB 2 premature based on present knowledge. The state should not be committed to a long term debt until a second opinion is received.

Roger McGlenn expressed opposition to HB 2 and submitted written testimony (Exhibit 4). He also distributed "Success in Texas" for committee members' information. (Exhibit 5)

Dennis Burr testified in opposition to HB 2 and suggested that the present system be "patched" until the 1991 legislative session.

Alec Hansen stated that the cities and towns of Montana have an annual payroll of $75 million. A .3% surcharge costs them $225,000 per year and a .28% surcharge would cost $210,000 per year. Because I-105 is in effect, services will have to be cut to raise these funds. The unfunded liability was at $81 million in 1986 when the cities and towns became self-

insured. The organization is responsible for a portion of that liability but is unconvinced that they should be required to repay the liability that has accumulated since that time. Clerical workers are a low risk occupation and would be hit extremely hard by the imposition of this tax. Before tax dollars are committed for thirty years the organization must be convinced that the bill will be the fairest and final answer to the unfunded liability.

George Wood testified in opposition to HB 2 and presented written testimony (Exhibit 6).

Riley Johnson stated that his organization opposed the 1987 payroll tax and opposed this tax as well. It is a tax on jobs and is being paid by low risk workers. The organization views HB 2 as a quick fix and would support a more reasoned solution in the 1991 Legislative session.

Gene Vucovich opposed the method of funding in HB 2. The Montana Municipal Insurance Authority realizes that they have an obligation to help reduce that portion of the unfunded liability that they helped to create. However, when the League of Cities and Towns withdrew from the fund, the unfunded liability was approximately $80 million and has virtually tripled since that time. They also question the use of the payroll tax to subsidize the administration of the state fund because of artificially low rates. Many cities cannot recover the money because of the restrictions of I-105. He recommended another temporary fix until the next legislative session.

Bridget Holland appeared in opposition to HB 2. She requested that short term funding be provided until July 1, 1991 and asked that a long term solution be addressed in the 1991 legislative session. Long term funding should be delayed until an independent actuarial evaluation of the unfunded liability can be conducted by a qualified actuarial firm. She urged the committee to give a Do Not Pass recommendation.

Bruce Moerer stated that his organization shares many of the concerns expressed earlier but the chief concern was the lack of a revenue source to pay the payroll tax. Like the municipalities, the school districts do not have the ability to recover the cost of the payroll tax, requiring that services be cut to meet the expense.

John Lahr testified in opposition to HB 2. He was not convinced that the data used was accurate enough to justify the passage of a bill of such magnitude. Their current payroll tax payments are $350,000 per year, which is passed on to the customer. He asked that a band-aid approach be used until the next legislative session.

Testifying in an Informational Capacity

Susan Witte, Montana State Insurance Commissioner's Office
Char Maharg, Department of Revenue

Susan Witte appeared in an informational capacity, neither as a proponent nor an opponent to HB 2. The Insurance Commissioner's office suggested technical amendments (Exhibit 7). When SB 428 was passed in 1989, it gave the Commissioner the authority to regulate the new state fund as an insurance company. The amendments address inconsistencies with present statute that would be created.

Char Maharg distributed suggested amendments (Exhibit 8) regarding the collection of the payroll tax by the Department of Revenue and explained the effects of each.

Questions From Committee Members:

Rep. Driscoll stated that SB 315 of 1987 saved employers at least 25% in costs to injured workers. He asked Mr. Wood how much was saved by his organization with the passage of SB 315 and how much was paid in payroll taxes by members. Mr. Wood replied that if the 25% estimate is correct, it would have saved members of his organization about $2 million per year. About $2 million per year is paid in payroll taxes.

Rep. Driscoll remarked that present statute provides that the fund be actuarially sound. Mr. Wood stated that there are viable alternatives that would make the fund sound.

Rep. Smith asked Mr. Wood for a suggestion on what can be done to solve the problem. Mr. Wood responded that he believes that SB 428 of 1987 should have been given time to work. The directors of the fund should have had more than five months to make proposals. There are solutions to the problem ranging from rate increases to spreading the liability to the general fund with income tax increases. Because of time restraints, no specific alternatives can be offered but can be developed for future use.

Rep. Pavlovich asked Mr. Burr if he could offer a solution to the unfunded liability problem. Mr. Burr responded that he did not have a long term solution but he suggested that the base of the payroll tax be broadened for a short term solution.

Rep. Simpkins asked Ms. Witte if she felt that administrative rule procedures would have to be followed when making rate changes. Ms. Witte replied that other companies are not required to submit changes to administrative procedures and the amendment would not require the state fund to make such changes through administrative procedure either. Rep. Simpkins asked what procedure would be followed when making rate changes. Ms. Witte responded that other companies file rates and supporting data.

Rep. Rice asked Rep. Glaser if he was sure that this bill would solve the unfunded liability problem. Rep. Glaser responded that if the old obligation is separated from the new obligation, the problem will become manageable.

Rep. Rice asked Rep. Glaser to review the provisions of this bill that prevent another unfunded liability. Rep. Glaser explained that he has a great deal of confidence in the board that has been appointed. The board has already made it clear that if this bill does not pass, there will be a 25% increase in rates. If the problem is not solved, he would expect that the Legislature would assign the old obligation to the department for oversight. The remainder of the insurance program would be let for bid to private management and the bureaucracy would no longer be involved.

Rep. Thomas asked Rep. Glaser if a higher payroll tax could be required to fund the bonds. Rep. Glaser responded that the bill caps the bonding at $220 million and sets the payroll tax at .28 percent. The Department of Revenue and the Board of Investments will then advise each succeeding whether the revenue stream is adequate and the rate could then be adjusted.

Rep. Thomas asked if there was language in the bill addressing bonding limits. Rep. Glaser said the bill caps the bonding ability at $220 million and provides a revenue stream to service the bonds.

Rep. Thomas asked if it was necessary to identify the state fund as a state agency. Rep. Glaser replied that there is no question that the state fund is a state agency. There would be no need for the legislature to address the problem if it was not a state agency.

Rep. Whalen stated that he understood that if lump sum payments were made in some cases, there is a possibility that $50-$60 million could be cut from the unfunded liability. He then asked Rep. Glaser if that was considered when the bill was drafted. Rep. Glaser responded that lump sum settlements are a tool that are used in private companies far more than in state settlements. The state does not have the money for lump sum settlements. Rep. Whalen thought that the possibility should be pursued because it would cut the unfunded liability. Under current law, lump sum settlements cannot be given. Rep. Glaser added that HB 2 is not a result of committee work but is a result of staff work with direction from himself and Rep. Harper.

Closing by Sponsor: Rep. Glaser stated that in 1989 the state fund took in excess funds of $4 million which implies that in the past, funds have not been reserved as they should have been. There should be no more band-aid approaches to the problem. It should be fixed now. He will not vote for any more band-aids.

The committee recessed until 6:00 p.m.

DISPOSITION OF HOUSE BILL 2

Motion: Rep. O'Keefe moved HB 2 **DO PASS**. Rep. Squires seconded the motion.

Discussion : John MacMaster explained that the amendments will have to be rewritten by Legislative Council staff after adoption to be put in correct form.

Amendments, Discussion, and Votes: Rep. Thomas moved the amendments submitted by the State Insurance Commissioner (Exhibit 7).

Mr. MacMaster explained that Amendment 1 submitted by the State Insurance Commissioner provides that premiums paid after July 1 can only be used for claims made after July 1. If any dividends result from the new premiums, they must be paid to the unfunded liability.

Rep. Driscoll moved adoption of amendment 1 submitted by the Insurance Commissioner. The motion **CARRIED** unanimously.

Mr. MacMaster explained that Amendment 2 proposes to strike "financial and" from line 17, page 8, in the provision of the code that would state that the Legislative Auditor shall, every year, conduct a financial and compliance audit of the state fund. He is to audit the unfunded liability and the new business. It specifies certain aspects that the audit must contain. The effect of the amendment would be that the Legislative Auditor would only conduct a compliance audit. The auditor must already conduct a financial and a compliance audit of every state agency under current law.

Rep. Thomas asked Scott Seacat, Legislative Auditor, for his opinion on the amendment. Mr. Seacat stated that under state and federal law, a financial audit must be performed if the fund is going to sell bonds.

Mr. MacMaster thought the intent of the amendment was to prevent duplication of the audit because the insurance commissioner will perform an audit also. However, the audit performed by the Legislative Auditor is not the same as the audit performed by the Insurance Commissioner. He thought there was a misunderstanding in the types of audits required by the different agencies.

Rep. Simpkins suggested the section be left alone for simplicity reasons and that the committee reject the amendment.

Rep. Simpkins made a substitute motion of **DO NOT PASS** on State Insurance Commissioner's Amendment 2.

Rep. Rice asked Mr. Seacat if the section of law would require him to do anything that he does not already do. Mr. Seacat responded that a financial and compliance audit is already required and this new section would require that the auditor look at the claims reservation process and actuary assumptions.

Rep. Thomas withdrew his **DO PASS** motion on Amendment 2. Rep. Simpkins' substitute motion of **DO NOT PASS** is in effect. The motion **CARRIED** unanimously.

Rep. Driscoll moved Amendment 3 **DO PASS.**

Mr. MacMaster explained that Amendment 3 states that the Commissioner of Insurance would conduct a biennial financial examination of the state fund.

The motion **CARRIED** unanimously.

Rep. Thomas moved Amendment 4 **DO PASS.**

Mr. MacMaster stated that this amendment would substitute "surplus" for "reserve" on page 10, line 13. Mr. MacMaster explained that the amendment is a result of the Insurance Commissioner's interpretation of Title 33, Chapter 2, part 5, talking about surplus requirements rather than reserve requirements. Legislative Council staff felt that part 5 dealt with reserve requirements. Susan Witte agreed, after discussion with Legislative Council staff, that part 5 does talk about reserve requirements. Mr. MacMaster thought the amendment may be in error. He thought that perhaps the Insurance Commissioner was trying to subject the fund to certain requirements that money would be set aside in case of cash flow problems. He advised the committee that it is a policy decision for the committee to decide if the state fund should be exempt from an extra assets requirement. Presently, there is a requirement in insurance statutes that provides that a mutual insurer who starts a new business must have initial reserves. Exemptions have been given in the past and this bill, and particularly this provision, would allow it again. If the committee decides to allow the exemption the bill should continue to say "reserve".

Rep. Driscoll stated that he understood "reserve" to mean money in the bank for losses incurred but not yet paid to the claimant, or, losses incurred but not yet reported; and surplus meant capital that is not yet committed but is used to prevent fluctuations in cash flow. He asked Ms. Witte if "reserve" remained in the bill, would that mean that the new insurance company would not have to reserve money for claims incurred and still owed? Ms. Witte responded that that was correct. Rep. Driscoll remarked that that would be creating

another unfunded liability. Ms. Witte stated that she did not know why there should be an exemption from reserve requirements.

Rep. Driscoll commented that when this bill was being drafted, he asked the Insurance Commissioner's office how much money he would need to write $100 million in business per year in Montana. The response was that he would need $600,000 as an insurance corporation and another $600,000 because it is a new company. In addition, for every $3 in premiums written, $1 in surplus would be required. If the new state fund is not exempt from the surplus requirements, it would have to have $33 million in the bank by July 1, 1992, to comply with this bill and the requirements of the Insurance Commissioner. If they are not exempt from the surplus requirements, by July 1, 1992, the Insurance Commissioner would have to shut the fund down. The fund cannot be exempt from reserve requirements because it would create another unfunded liability.

Rep. Glaser stated that he asked staff to contact the Insurance Commissioner's office about exempting the fund only from the surplus reserve requirements. He asked that staff and the commissioner's office prepare the amendment accordingly.

Rep. Thomas asked that action be delayed on this amendment. He then withdrew his motion.

Rep. Whalen moved Amendment 5 **DO PASS.**

Rep. Rice questioned the second sentence of the amendment and asked Ms. Witte to explain. Ms. Witte said that the language is directly from 33-2-701(1). It simply states that annual statements must be in a form that is approved by the Insurance Commissioner. Rep. Whalen asked if there was any reason that why the amendment could not read"as required in 33-2-701(1) MCA". Ms. Witte said there was no reason it could not read that way.

Rep. Whalen moved Amendment 5 with the exception of the second sentence and that "as required in 33-2-701(1) MCA" be substituted.

Rep. Simpkins asked if that amendment was already in statute. Ms. Witte responded that it was, with the exception of the section dealing with alien insurers.

Ms. Witte remarked that the date is changed by this amendment from March 1 to September 1 for the state fund only to accommodate the close of the state's fiscal year.

Rep. Rice asked if the amendment gave sufficient time to file the required report. Jim Murphy, State Compensation Mutual Insurance Fund, responded affirmatively.

Rep. Driscoll asked if the state fund has officers as listed in the amendment. Mr. Murphy said the fund did not. Mr. MacMaster stated that there is no president, vice-president or secretary to the state fund but there is an executive director.

Rep. Whalen withdrew his motion and offered a substitute motion that included his original motion (Amendment 5 with second sentence changed) and also changed the language on officers to read "executive director".

Mr. MacMaster suggested that section 4 of Amendment 5 also be changed. He also suggested that "fine" be changed to "civil penalty" in subsection 6.

Rep. Whalen asked that Mr. MacMaster's suggestions be incorporated into his substitute motion.

The motion **CARRIED** unanimously.

Rep. Driscoll moved Amendment 7 **DO PASS.**

Rep. Glaser made a substitute motion of **DO NOT PASS.** He remarked that the section cited was requested by the Administrative Code Committee. Basically, this portion of the bill states that procedure, formulas and factors used in setting rates would be subjected to public scrutiny through the Montana Administrative Procedure Act.

Rep. Driscoll asked how long it takes to go through the MAPA process. Rep. Glaser said that the actual rates are not included but only the rate making process. Rep. Driscoll pointed out that that is not how the section reads: "classification and premium rates may only be adopted and changed using the process, procedures, formulas and factors set forth in rules". There is another section of law that says the state fund must tell the employers at least thirty days prior to changing their rates. Rep. Glaser disagreed and stated that only the procedure is subject to MAPA and not the rate itself.

Rep. Whalen asked if SB 428 in the last session stated that the state fund must follow the NCCI rate setting process. Rep. Driscoll said that SB 428 said that the fund can vary from the rate but there is also a provision that says that rates cannot increase more than 100%.

Rep. Glaser stated that the bill in the last session clearly states that the NCCI rates are the starting point and the Board can then do as they wish as long as the rates remain actuarially sound.

Rep. Whalen asked Rep. Glaser the intent of the provision. Rep. Glaser replied that he was not comfortable with dealing with a $385 million problem without public input.

Rep. Thomas felt that the suggested language was restrictive and cumbersome and encouraged the committee to delete the language from the bill. Rep. Glaser remarked that the state fund is already subject to MAPA and this provision is less restrictive than current law. The state fund does not believe that they are presently subject to MAPA but others feel that they are.

Rep. Thomas remarked that if the fund is already subject to MAPA, this provision would not dilute what is already in law. Mr. MacMaster agreed that the statute would not be diluted by this provision. He added that he agreed with Rep. Glaser that current law provides that state agencies are subject to MAPA and the state fund is a state agency. The state fund does not believe that it is subject to MAPA. In the past they have abided by MAPA with respect to some rules but not to others. This provision tells the state fund that they are indeed subject to MAPA.

Rep. Simpkins asked Mr. MacMaster if he interpreted this provision as saying that the state fund is only subject to the process, procedures and formulas used to determine rates and not for the rates themselves. Mr. MacMaster said that was the way he interpreted the provision. As staff attorney for the Administrative Code Committee, he advised the state fund in the past that they are subject to MAPA and that they should adopt procedures to be followed when setting rates and that they would not have to go through the rulemaking process each time a rate was changed. He advised the committee that the issue is a policy decision on whether the state fund is exempt. No statutes can be cited where the state fund is exempt.

Rep. Thomas stated that the state fund should be allowed to run as a business and the provision should be deleted. Rep. Glaser said it was not his intention to try to micro-manage the state fund or state government with this provision.

Rep. Driscoll said that there are other state laws from which the state fund is specifically exempt such as personnel policies. The state fund should be run as closely as possible to a private corporation.

The **DO NOT PASS** motion **CARRIED** with 9 voting for the motion and 7 opposed.

Rep. Driscoll moved Amendment 7 **DO PASS**. Rep. Glaser made a substitute **DO NOT PASS** motion.

Rep. Simpkins asked if anyone checks to insure that state agencies are complying with state law. Mr. MacMaster replied that no state agency checks on another agency. He reminded the committee that this amendment is suggested by the Insurance Commissioner who is charged with insuring that insurance laws are abided by in Montana.

Roll Call Vote was taken. The **DO PASS** motion **FAILED** by a vote of 6 to 10. Rep. Whalen moved to reverse the vote to **DO NOT PASS**. It **CARRIED** unanimously.

The committee then considered the Department of Revenue's suggested amendments.

Mr. MacMaster stated that Amendment 1 amends the title of the bill. He said he will amend the title to comply with other amendments that carry. The committee agreed.

Rep. Simpkins moved Amendment 2 **DO PASS**.

Mr. MacMaster explained that the Department of Revenue presently collects withholding taxes. HB 2 makes DOR responsible for collecting the payroll tax as well and this amendment provides that they can collect it in the same manner as withholding taxes.

The motion **CARRIED** unanimously.

Rep. Driscoll moved Amendment 3 **DO PASS**.

Mr. MacMaster stated that Amendments 3, 4, and 5(3) a, b, and c may be considered together because Amendments 3 and 4 delete some provisions and Amendment 5 rebuilds the deleted provisions. He pointed out that this amendment also provides that if an employer does not pay his entire bill, the funds are applied to the withholding tax first.

Rep. Driscoll made a substitute motion that Amendments 3, 4, and 5(3) a, b, and c **DO PASS**. The motion **CARRIED** unanimously.

Rep. Driscoll moved Amendment 5(4) **DO PASS**. Rep. Thomas made a substitute motion **DO NOT PASS**.

Rep. Thomas stated that he did not think that the employees or officers of a company should be responsible for payment of corporate taxes. Rep. Kilpatrick remarked that the officer must "willfully" not pay the tax which implies that he did so with the intention of defrauding the state.

Rep. Whalen made a substitute motion that Amendment 5 (4) **DO PASS** with the word "willfully" being replaced with "purposely and knowingly".

Rep. Thomas asked if there was a penalty in the bill for nonpayment of the tax. Denis Adams, Director of Department of Revenue, stated that the amendment makes the wording for the collection of the payroll tax identical to the wording for the collection of the withholding tax. If it is not included in the bill, DOR cannot pursue the collection of the tax.

Rep. Whalen withdrew his substitute motion. The motion reverts to Rep. Thomas' substitute motion of **DO NOT PASS.**

Rep. Thomas asked Mr. Adams if DOR was currently pursuing employees for actual taxes due by the corporation. Mr. Adams responded affirmatively, adding that if the employees willfully fail to pay when due, a personal debt to the employees can be incurred.

Roll Call Vote was taken. The motion **FAILED** 4 to 12. Rep. Whalen moved to reverse the vote to a **DO PASS** motion. The motion **CARRIED** unanimously.

Rep. Driscoll questioned Amendments 5, 6(b) and (c). He pointed out that Workers' Compensation Division is no longer in existence. Because all employers in Montana are supposed to pay the tax, he did not understand the reason for the request for information. Mr. Adams replied that presently there are many employers in Montana, primarily agricultural employers, that are not required to pay withholding income tax on wages. However, they are required to have workers' compensation insurance. Unless DOR receives the information from the state fund, they will not be able to bill those employers.

Mr. MacMaster stated that the payroll tax is an employer tax on all employers required to carry workers' compensation insurance. The amendments in question require the state fund to give the names of those employers to the Department of Revenue to enable them to collect the tax.

Rep. Driscoll moved **DO PASS** on Amendment 5, 6(a), (b), and (c).

Rep. Thomas asked Mr. Adams if current law provided that the state fund give the list of their clients to DOR. Mr. Adams responded that there is a provision that prevents agencies from exchanging information. Mr. MacMaster added that state agencies exchange information in many instances. Rep. Glaser stated that if you owe taxes, then pay them. If you don't like them, get them changed.

The motion **CARRIED** with Rep. Thomas opposing.

Mr. MacMaster stated that Amendment 6 relates to the administration of the tax, remedies that can be used by DOR in the collection of the tax, and enforcement of the tax.

Rep. Kilpatrick moved Amendment 6 **DO PASS.** The motion **CARRIED** unanimously.

Mr. MacMaster explained that Amendment 7 provides that if, when DOR takes over collection of the tax from the Department of Labor, DOR has a past due account over 720 days (2 years overdue), the State Auditor will collect the account rather

than DOR. This method is used in the collection of other taxes.

Rep. Driscoll moved Amendment 7 **DO PASS.**

Rep. Pavlovich moved to amend 7, (2), by removing "State Auditor for collection and inserting "State Attorney General".

Rep. Pavlovich moved **DO PASS AS AMENDED** on Amendment 7. The motion **CARRIED** 9 to 7.

Mr. MacMaster stated that Amendment 8 changes the effective date of the change to DOR and the State Auditor to begin on July 1, 1991 instead of July 1, 1990.

Rep. Driscoll moved Amendment 8 & 9 **DO PASS.**

Rep. Glaser commented that he will not vote for these amendments because it extends the collection problem for one more year.

The motion **CARRIED** 11 to 5.

ADJOURNMENT

Adjournment At: 8:00 p.m.

Angela Russell / by JA
REP. ANGELA RUSSELL, Chairman

AR/TD

09052190.MIN

DAILY ROLL CALL

BOR AND EMPLOYMENT RELATIONS COMMITTEE

TE 5/21/90

ME	PRESENT	ABSENT	EXCUSED
P. COCCHIARELLA	✓		
P. COMPTON	✓		
P. DRISCOLL	✓		
P. GLASER	✓		
P. KILPATRICK	✓		
P. LEE	✓		
P. O'KEEFE	✓		
P. PAVLOVICH	✓		
P. RICE	✓		
P. SIMPKINS	✓		
P. SMITH	✓		
P. SQUIRES	✓		
P. THOMAS	✓		
P. WHALEN	✓		
P. McCORMICK, VICE-CHAIR	✓		
P. RUSSELL, CHAIR	✓		

EXHIBIT 1
DATE 5/21/90
HB 2

BILL SUMMARY FOR HB 2
(First Reading, white, copy)

Prepared by John MacMaster, drafter, and Staff Attorney,
Montana Legislative Council, for Reps.
Harper and Glaser

House Bill No. 2 has three basic underlying purposes:

--Separate the unfunded liability from future claims and liability on the basis of whether an accident occurred before July 1, 1990 (the unfunded liability), or occurred on or after July 1, 1990 (future business).

--Fund pre-July 1, 1990, claims (the unfunded liability) by a method, and with money from sources, that are different than and separate from the funding of post-July 1, 1990, claims (future business). The employers' payroll tax will be extended to the year 2020 and used to pay off the unfunded liability either directly or by using the tax to finance bonds or loans that will in turn be used to pay off the unfunded liability. The costs of future business will be paid for solely by insurance premiums on the future business.

--Provide increased legislative oversight of the future business, ensure that premiums charged for future business will be adequate to cover costs, and clarify the duties of the state fund.

Section 1: States the problem and the purposes of the bill, and is also designed to help ensure that the interest paid on bonds sold will be exempt from the federal income tax.

Section 2: Provides that premiums on wages due before July 1, 1990, may be used only to pay off the unfunded liability and premiums paid on wages due after that date may only be used to fund future business. The premium money will be placed in separate accounts for this purpose and a separate accounting kept by the state fund of the employee time and other costs allocated to work on the unfunded liability and work on future business.

Section 3: Allows the state fund to borrow up to $12 million from the unfunded liability account to pay for the costs of the first few months of the future business. This money will be needed until sufficient future business premiums are collected to finance the future business. The money must be repaid to the unfunded liability account by July 1, 1991, with interest.

Sections 4, 5, 15, and 16: Provide a method and money source for paying off the unfunded liability.

The employers' payroll tax will be lowered from .3% to .28% and extended to the year 2020. The tax money may only be used to pay off the unfunded liability, including claims administration costs.

The tax proceeds will be used to pay off the unfunded liability until the state fund determines that the tax proceeds will be insufficient for that purpose and a cash flow problem will soon arise and last one or more years. If the Governor's budget director agrees, he will certify to the Board of Investments the dollar amount needed by the state fund during the one or more years of predicted inadequate tax revenue. The Board of Investments will issue bonds and give the bond sale proceeds to the state fund. The board may also loan the state fund money. In either case, the bonds or loans may be short or long term and may cover one or more years of projected cash flow shortages. Also in either case, the board will give the state fund the money it needs only as it needs it. For example, if $100 million in bonds is issued to cover a projected five-year cash flow shortage the board will periodically give the state fund the bond money, not give the state fund the whole $100 million at once.

Bond money and loans given the state fund will be repaid with the employers' payroll tax. All such money must be repaid by the year 2020.

The total amount of bond and loan money combined that can be given to the state fund over the life of the program (the whole tax-bond-loan program terminates in the year 2020) is $220 million. It is projected that an employers' payroll tax of .28% will be at least enough to pay off up to $220 million over 30 years. See the Legislative Auditor schedule, at the end of this bill summary, of projected unfunded liability payments and employers' payroll tax proceeds and other projections.

No bond or loan money will be given the state fund unless the projected tax revenue will be sufficient to repay money already given plus money proposed to be given the state fund.

During each regular session the legislature must adjust the tax rate to ensure that the revenue will be sufficient for the total debt service. This could result in a lowering of the rate one or more times in the future.

Section 13: Switches collection of the tax from the Department of Labor to the Department of Revenue.

Section 14: A clean-up amendment that makes it clear that for the purposes of the bill the unfunded liability refers to pre-July 1, 1990, accidents.

Section 6: Ensures legislative oversight through biennial Legislative Auditor audits of both the unfunded liability operation and the future business of the state fund.

Section 7: Clarifies the state fund's duty to make premiums for future business match costs. If a given cost cannot be adequately projected, the part of the premium that reflects that cost must be calculated to be more, rather than less, likely to cover the cost. If this results in a surplus, the surplus may be refunded to the future business policy-holders through a dividend.

Section 8: Exempts the state fund's future business from certain asset and reserves requirements the law places on private insurance companies. This amendment reflects the fact that the state fund is a state agency and has been monetarily backed by the legislature in the past, is monetarily backed by this bill, and will probably, if necessary, be monetarily backed in the future by the legislature.

The current law that the unfunded liability cannot be used to declare the state fund insolvent is amended by adding a provision that neither may the future business be declared insolvent due to an initial future business start-up loan under section 3.

The fact that the state fund is a state agency and is thus subject, as are other state agencies, to such laws as the Administrative Procedure Act, the Legislative Audit Act, and the freedom of information and public participation acts, is made clear.

Section 9: Prohibits the sale of bonds directly by the state fund, its board of directors, or its executive director.

Section 10: Provides that employer premium classifications and rates must be set and changed in accordance with a process, procedure, and formulas and factors, that are in an administrative rule adopted under the Administrative Procedure Act and published in the Administrative Rules of Montana.

Provides that if the future business reaches a point at which dividends can be declared the money must instead be placed in the account that funds the payoff of the unfunded liability. Once the unfunded liability is paid off, dividends go to the future business policy holders.

Section 11: Amends 39-71-2321 to provide that money now going into the state fund must be separated into two accounts, one for the unfunded liability and one for future business. Only premiums on post-July 1, 1990, insurance coverage will go into the future business account. Money now in the account, whether from premiums, the employers' payroll tax, or other sources, will go into the unfunded liability account. The employers' payroll tax revenue will go into the unfunded liability account after July 1, 1990. However, the tax revenue will first, under section 16, go into a separate bond debt service account to the extent needed to service bond debt, with any remaining money going into

the 39-71-2321 unfunded liability account. Bond and loan money from the Board of Investments will also go into the unfunded liability account. Loans must be repaid from the unfunded liability account.

Section 12: Clean-up amendment needed because of other parts of the bill.

Section 17: This extends from 1991 to 2020 the year in which the employers' payroll tax terminates.

Sections 18 through 23: These are self-explanatory standard sections of the type often seen at the end of a bill. However, note that under section 21 the bill needs a 2/3 vote of each house. Section 23 terminates the tax-bond-loan program on July 21, 2020, but the parts of the bill aimed at legislative oversight, clarification of state fund duties, and ensuring adequate premium rates, are not terminated.

OFFICE OF THE LEGISLATIVE AUDITOR
SCHEDULE OF PROJECTED LIABILITY PAYMENTS AND CASH NEEDS
ANALYSIS OF GLASER/HARPER PROPOSAL

90L-10L.WK1
04:34 PM
05/16/90

FISCAL YEAR	TOTAL PROJECTED LIABILITY PAYMENTS	PROJECTED ADMIN EXPENSES	PROJECTED DEBT SERVICE EXPENSES	TOTAL PROJECTED LIABILITY + EXPENSES	PAYROLL TAX INCOME	PROJECTED END OF YEAR CASH	PROJECTED INTEREST EARNINGS
1991	$86,672,000	$3,000,000	$0	$89,672,000	$12,871,707	$138,199,707	$10,364,978
1992	$67,660,000	$2,700,000	$11,250,000	$81,610,000	$13,364,088	$80,318,773	$6,023,908
1993	$47,912,000	$2,430,000	$11,250,000	$61,592,000	$13,875,305	$38,625,986	$2,896,949
1994	$32,686,000	$2,187,000	$11,250,000	$46,123,000	$14,406,077	$44,806,012	$3,360,451
1995	$20,915,000	$1,968,300	$13,875,000	$36,758,300	$14,957,153	$26,365,315	$1,977,399
1996	$14,869,000	$1,486,900	$13,875,000	$30,230,900	$15,529,308	$13,641,123	$1,023,084
1997	$11,278,000	$1,127,800	$13,875,000	$26,280,800	$16,123,351	$39,506,758	$2,963,007
1998	$9,214,000	$921,400	$16,500,000	$26,635,400	$16,740,118	$32,574,482	$2,443,086
1999	$8,177,000	$817,700	$16,500,000	$25,494,700	$17,380,477	$26,903,346	$2,017,751
2000	$7,352,000	$735,200	$16,500,000	$24,587,200	$18,045,333	$22,379,230	$1,678,442
2001	$6,609,000	$660,900	$16,500,000	$23,769,900	$18,735,621	$19,023,393	$1,426,754
2002	$5,940,000	$594,000	$16,500,000	$23,034,000	$19,452,315	$16,868,462	$1,265,135
2003	$5,339,000	$533,900	$16,500,000	$22,372,900	$20,196,424	$15,957,121	$1,196,784
2004	$4,797,000	$479,700	$16,500,000	$21,776,700	$20,968,998	$16,346,203	$1,225,965
2005	$4,310,000	$431,000	$18,250,000	$22,991,000	$21,771,125	$16,352,293	$1,226,422
2006	$3,920,000	$387,900	$19,518,750	$23,826,650	$22,603,936	$16,356,000	$1,226,700
2007	$3,608,000	$349,110	$20,732,500	$24,689,610	$23,468,604	$16,361,694	$1,227,127
2008	$3,359,000	$314,199	$21,937,500	$25,610,699	$24,366,349	$16,344,471	$1,225,835
2009	$3,159,000	$282,779	$23,076,250	$26,518,029	$25,298,435	$16,350,712	$1,226,303
2010	$2,999,000	$254,501	$24,245,000	$27,498,501	$26,266,176	$16,344,690	$1,225,852
2011	$2,840,000	$229,051	$25,432,500	$28,501,551	$27,270,936	$16,339,926	$1,225,494
2012	$2,680,000	$206,146	$26,677,500	$29,563,646	$28,314,131	$16,315,905	$1,223,693
2013	$2,520,000	$185,531	$27,965,000	$30,670,531	$29,397,231	$16,266,298	$1,219,972
2014	$2,381,000	$166,978	$29,230,000	$31,777,978	$30,521,763	$16,230,055	$1,217,254
2015	$2,201,000	$150,280	$30,611,250	$32,962,530	$31,689,312	$16,174,091	$1,213,057
2016	$2,041,000	$135,252	$31,986,250	$34,162,502	$32,901,524	$16,126,169	$1,209,463
2017	$1,882,000	$121,727	$33,240,000	$35,243,727	$34,160,106	$16,252,011	$1,218,901
2018	$1,722,000	$109,554	$34,915,000	$36,746,554	$35,466,832	$16,191,189	$1,214,339
2019	$1,562,000	$98,599	$27,412,500	$29,073,099	$36,823,545	$25,155,974	$1,886,698
2020	$4,863,000	$88,739	$0	$4,951,739	$0	$22,090,933	$1,656,820
2021	$0	$50,000	$0	$50,000	$0	$23,697,753	$1,777,331
	$375,467,000	$23,204,148	$586,105,000		$662,966,277		

PAYROLL TAX (ANNUAL) $13,283,000
COVERED PAYROLL $4,427,666,667

THIS SPREADSHEET PREPARED WITH THE FOLLOWING ASSUMPTIONS:

COST OF CAPITAL-->	7.5000
PAYROLL INFLATION RATE->	3.8253
PAYROLL TAX OF-->	0.2800
BEGINNING CASH BALANCE->	$65,000,000
BOND PROCEEDS->1991	$150,000,000
BOND PROCEEDS->1994	$35,000,000
BOND PROCEEDS->1997	$35,000,000
TOTAL BOND PROCEEDS	$220,000,000

THIS SPREADSHEET CALCULATED THE FOLLOWING FINANCIAL RELATED DATA:

INTEREST EXPENSE	$366,105,000
YEAR LOAN PAID OFF	2019

Exhibit # 2
5/21/90 HB 2

I R Oct. 26, 1989.

MONTANA

;tudy: Work comp ›enefits are low

· The Associated Press

Workers' compensation insurance benefits in Montana continue to ʒ behind the national average, and the state ranks no better than ːh in its payment of six major types of benefits, a new federal re-ːrt shows.

The U.S. Department of Labor report is based erroneously on bene-. rates that the 1989 Legislature blocked from taking effect. How-ːer, when the correct figures are substituted, the mistake does not ter Montana's ranking among the 50 states.

The result is that Montana's position has changed little since a milar report was released by the agency last March. The state lost ound in four benefit categories, improved in one and remained the ıme in another.

"This should put to rest any talk about Montana rolling out the red ırpet for injured workers," said Jim Murry, executive secretary of ːe Montana State AFL-CIO. "We don't have the highest benefits and e don't have the highest premium rates, but what we do have is a ːgh injury rate."

The issue of how Montana's benefits and premium rates compared › those in other states has long been argued in the debate over alter-ıg the workers' compensation system in Montana.

A study by the state last year showed Montana's premiums did not ınk in the top 10 among Western states for most occupations.

The new federal report, released last week, contained maximum ːeekly benefit rates that would have taken effect July 1 had a special ːgislative not continued a freeze on benefits for another two years.

However, the error did not change Montana's national rankings, ːhich ranged from 30th to 43rd for the various types of benefits. In ɔmparison, the March report gave Montana rankings between 29th nd 46th.

Here is a summary of the state's position using the correct rates:

■ For temporary total disability benefits, Montana ranks 35th ʌith a maximum weekly payment of $299. The national average is 367.89. Montana ranked 33rd in March.

■ For maximum weekly permanent total disability benefits, the tate ranks 32nd at $299. The U.S. average is $362.34. Montana ranked ːlst in March.

■ For maximum weekly permanent partial disability benefits, Montana comes in 42nd at $149.50. The national average is $303.15. Montana ranked 46th in March.

■ For maximum weekly benefits to a surviving spouse and chil-ıren, the state finishes 30th at $299. The national average is $360.40. Montana ranked 29th in March.

■ For maximum total benefits for permanent partial disability, ːhe state is 38th at $74,750. Montana was ranked the same in March.

■ For burial allowance, the state ranks 43rd at $1,400. The U.S. ıverage is $2,507 and Montana ranked 42nd in March.

"It's clear that Montana's workers' compensation benefits are not ıigh compared to the rest of the country," Murry said.

Exhibit # 2
5/21/90 HB 2

DEPARTMENT OF LABOR & INDUSTR

DIVISION OF WORKERS' COMPENSATION

STAN STEPHENS, GOVERNOR

MARGARET "PEG" CONDON BLDG.
5 SO. LAST CHANCE GULCH

STATE OF MONTANA

HELENA, MONTANA 59601

WORKERS' COMPENSATION DIVISION
Inter-Office Communication

December 6, 1989

In November of 1988, the Workers' Compensation Division contacted the state compensation insurance funds and large private insurers in 20 states west of the Mississippi to update the survey conducted in May of 1988. The purpose of the survey is to provide an accurate comparison of the actual rates used by other insurers for occupations that are common in the Montana workplace. The survey is updated semiannually to account for rate changes that take place on July 1 and on October 1 by many of the insurers.

Again, the survey confirms that Montana State Fund rates are not among the highest in the region. In fact, in the majority of the occupations surveyed, the Montana State Compensation Insurance Fund rates rank in the lower half. In 13 of the 20 occupation classifications, the Montana State Fund rates are lower than the majority of the insurers in other states. Only one rate falls in the top quarter of the rates surveyed. The average ranking overall for the Montana State Fund is 28th out of 29 insurers rated.

The Job classifications surveyed are representative of the Montana economy and were selected based on the amount of payroll reported annually as well as some additional occupations common in Montana. A ranking of "1" indicates the highest rate among the 29 insurers surveyed. In no case, either the comparison of private insurers or with state compensation insurance funds, does the Montana State Fund rate rank as "Number One." The highest ranking Montana State Fund has is "7" in the classification "Nursing Home Employees" when all insurers are ranked. That is the only classification that the Montana State Fund ranks in the top 25%.

Division Telephones:
Administration
Insurance Compliance

Six classifications rank in the second quarter; 6 rank in the third quarter; and 7 rank in the lowest quarter.

The table below shows the distribution of Montana State Fund rates.

Distribution of
MONTANA STATE COMPENSATION INSURANCE FUND RATES
Compared to All Insurers Surveyed

	Rank	Number of State Fund Rates	% in October
Highest Quarter	01-07	1	05%
Second Quarter	08-14	6	30%
Third Quarter	15-21	6	30%
Lowest Quarter	22-29	7	35%
		20	100%

Sixty-five percent (65%) of the Montana rates fall in the lower half of all insurers surveyed. Only one rate, or 5%, fall within the top quarter and 6 rates, or 30%, fall within the second quarter.

The rates used in the survey are the actual rate charged--not a filed or guideline rate.

Table Two of the survey compares Montana State Fund rates to those charged by private insurers in each of the 20 states. As the table illustrates, Montana State Fund rates are lower than the rates charged by the private insurers in Montana and in the majority of other states. It should be noted that the Montana private insurer reported in this survey is a different insurer than that reported in the May survey. The private insurer reported in this survey uses the National Council of Compensation Insurance guideline rates.

Thirteen of the 20 states surveyed have state compensation insurance funds. Survey Table Three compares the state fund rates. The results are nearly identical when only state fund rates are

compared. Again, in 13 of the 20 classifications, Montana State Fund rates rank in the lower half of the state funds surveyed.

The state funds fulfill several needs. They are the insurer of last resort ensuring that any business can obtain coverage and provide an insurance alternative for the small and high risk employer. In addition, state funds provide a competitive rate alternative to the private insurance companies. This competition seems to be working well in Montana. In the previous survey, the private insurer pegged its rates at 17 1/2 percent (17.5%) above the State Compensation Insurance Fund rate. The insurer reported in this survey does not use the Montana State Fund rate as its guideline but used the rate recommended by the National Council on Compensation Insurance (NCCI).

In summary, the survey demonstrates that Montana State Fund rates for workers' compensation are near or below the median, for all occupations surveyed--both in the comparison to other state funds and private insurers.

PJS/bac
(doc. 2397x)

STATE SURVEYED	FARM & DRIVERS	CATTLE	LOGGING LUMBERING	TRUCK DRIVERS	PLUMBERS	ELECTRICAL WIRING	RESIDENTIAL CARPENTRY	COMMERCIAL CARPENTRY	OIL & GAS WELL DRILLING	TRUCK TOWING TRUCKING	RETAIL STORE CLERK	YARDS BUILDING MATERIALS	AUTO REPAIR & SERVICE	PROFESSIONALS	CLERICAL OFFICE	NURSING HOME EMPLOYEES	HOSPITAL PROP EMPLOYEE	SCHOOL TEACHER	HOTEL HOTEL DUDE RANCH	RESTAURANT BAR
MONTANA																				
State Fund	10.21	10.21	38 22	15.85	6.17	4 38	10 42	19.88	24.73	16.59	1.17	8.11	5.33	0.88	0 37	9 71	1 67	0 26	5 65	3 44
Private Insurer(1)	a)14.30	a)18 03	a)67.91	a)45 50	12.45	9.53	23.15	40 15	33.58	32.38	3.08	12.41	9.34	1.66	1.05	15.67	2 98	0.60	10 52	7.16
ALASKA																				
Private Insurer	11.64	14.82	46.24	46.24	11.06	8.23	16 65	16.51	28.54	18.43	2.07	12.14	7 86	1.05	0.64	8.08	2 12	0 62	5 71	4.55
ARIZONA																				
State Fund (2)	8 58	12.61	15 96	15.96	5.69	7.88	17.06	21.28	22.51	13.62	2.25	9 03	5.51	0.72	0.48	8.42	2.76	0.53	6 22	4 30
Private Insurer	8.58	12.61	15.96	15.06	5.69	7.88	17.06	21.28	22.51	13.62	2.25	9.03	5.51	0.72	0.48	8.42	2.76	0.53	6.22	4.30
CALIFORNIA																				
State Fund	b)11 99	22.08	27 41	27.41	c) 9.22	d) 7.01	c)20 34	c)20 34	24 18	17.44	4 43	11 59	e) 5.96	1.38	0.78	11.25	3.66	2 21	10 39	6 65
Private Insurer	b)11 99	22.08	27.41	27.41	c) 9.22	d) 7.01	c)20 34	c)20.34	24 18	17.44	4 43	11.59	e) 5.96	1.38	0.78	11.25	3.66	2.21	10.39	6 65
COLORADO																				
State Fund	11 46	17 30	61.35	61.35	8.78	5.20	21 08	16.92	28 63	13.35	1.77	10 09	6 38	0.94	0.44	9 68	1.94	0 59	6 44	3.80
Private Insurer	11.46	17.30	61.35	61.35	8.78	5.20	21.08	16 92	28 63	13.35	1.77	10 09	6.38	0.94	0.44	9 68	1 94	0.59	6.44	3 80
HAWAII																				
Private Insurer	11.55	15.87	102.85	102.85	7.27	9.98	22.67	32.61	23 02	16.37	2.42	11.47	7 85	1.37	0.90	5.45	3.29	0.92	5.54	4 06
IDAHO																				
State Fund	7.50	11 22	20 41	20 41	4 09	4.78	12.34	13.99	12 15	18.38	1.58	6.52	5.00	f) 0.79	0.41	7 47	2.99	0 44	5.39	3 89
Private Insurer	7.50	11.22	20.41	20.41	4.09	4.78	12.34	13.99	12.15	18.38	1.58	6.52	5.00	f) 0.78	0.41	7.47	2.99	0 44	5.38	3.89
IOWA																				
Private Insurer	7 55	6 63	31 63	31.63	6.77	4.02	6 80	11.50	20.79	10.49	1.11	4 50	3.58	0.68	0.23	3.19	0 78	0.31	2.24	1 92
KANSAS																				
Private Insurer	5 94	6.76	19 28	19.28	4.01	3.47	9.06	8.60	12 01	9 33	1.37	4 24	3 07	0.55	0.24	3.25	0.91	0 27	2.59	2.21
MINNESOTA																				
State Fund	13 60	13 60	30 68	30 68	8 49	5.04	15 12	25 80	20 74	20.12	1.74	12 93	6 34	1.15	0 40	7.75	2.62	0 67	3 50	3 50
Private Insurer	16 31	16.31	36.81	36.81	10.19	6.05	18.14	30.96	24 88	24.14	2.09	15 51	13 27	1.38	0 48	9.30	3.14	0.80	4.20	4 20
NEBRASKA																				
Private Insurer	4.92	7.39	67.46	45.20	10.26	10.70	20.86	30.79	29.58	25.40	2.43	12.08	8.74	1 41	0 81	11.38	3.38	0.68	8.05	6 22
NEVADA																				
State Fund	g) 9 85	20.96	12.00	12 00	h) 9.66	5.83	i)14 67	i)14 67	10 60	5 97	j) 2.40	8 03	5 97	k) 0.44	0 51	7.20	3 05	1 07	l) 5.05	m) 3 40
NEW MEXICO																				
Private Insurer	11.67	11.26	41 88	41.88	10.09	5.95	14 37	19 31	28.57	16.53	3 01	10.91	6 27	1.08	0.54	5.61	2.59	0.68	5.91	4 78
NORTH DAKOTA (3)																				
State Fund	8 95	8.95	13.31	13.31	7.56	2.60	7.46	7.46	12.51	13.40	0.83	3.32	4.75	1.41	0.25	1.80	1.80	0 47	2.18	1 43
OKLAHOMA																				
State Fund	8 55	12.02	28 01	28.01	5.50	4.47	10 61	11.43	14.72	13.49	1.75	6 05	3.63	0.88	0.40	6.92	1.66	0 41	6.30	4 43
Private Insurer	8 22	11.82	26 91	26.91	5.35	4.41	10 60	11.24	14.49	13.26	1.72	7 74	3 57	0.86	0.40	6.82	1.64	0 42	6.18	4 37
OREGON (4)																				
State Fund	15 05	21.03	38.45	20.28	9.20	6.03	27 72	24 31	45.29	20 28	3.45	9 56	8 98	1.17	0 61	14.51	2.39	0 89	11.01	5.90
Private Insurer	13.90	19.42	35.50	35.50	8.50	5.57	25 58	22.44	41 81	18.72	3.18	8.82	8 29	1.08	0.56	13 39	2.21	0 64	10.16	5.45
SOUTH DAKOTA																				
Private Insurer	b)10.13	10.59	31.00	31.00	6.12	3.67	7.11	12.00	9.92	10.34	1.37	5.66	3.36	0.77	0.38	3.42	0.95	0.42	2 57	1 91
UTAH																				
State Fund	3.63	5.20	12 22	12.22	2.83	2.61	6 23	6 23	6.07	7.23	0 61	4.13	2 43	n) 0.45	0.21	2 23	0.42	0 17	1 39	1 41
Private Insurer	4.84	6.93	16.29	16.29	3.77	3.48	8.31	8.31	8.09	8.64	0.81	5.50	3 24	n) 0 60	0.28	2.97	0.56	0.23	1.85	1.88
WASHINGTON (5)																				
State Fund	11.23	22.15	40.06	16.01	8.65	5.85	17.10	18.20	12.43	18.53	3.29	5.97	5.17	0.56	0.92	9.54	4.80	1.21	9.99	6.54
WYOMING (6)																				
State Fund	1.54	1.54	3.80	3.80	3.80	3.80	3.80	3.80	3.40	3.80	0 61	1.61	1.12	0.38	0.11	0.90	0.90	0.70	1 70	0.75
NF STATE FUND																				
RANKING	14/29	22/29	10/29	25/29	18/29	22/29	22/29	12/29	10/29	13/29	24/29	16/29	17/29	13/29	23/29	7/29	21/29	26/29	19/29	21/29
Rank/Total																				
1 = Highest Rate																				

11/28/88

WORKERS' COMPENSATION INSURANCE RATE SURVEY
PRIVATE INSURERS & MONTANA STATE FUND

STATE SURVEYED	FARM & DRIVERS	CATTLE	LOGGING LUMBERING	LOGGING TRUCK DRIVERS	PLUMBERS	ELECTRICAL WIRING	RESIDENTIAL CARPENTRY	COMMERCIAL CARPENTRY	OIL & GAS WELL DRILLING	TRAILER TOWING TRUCKING	RETAIL STORE CLERK	YARDS BUILDING MATERIALS	AUTO REPAIR & SERVICE	PROFES-SIONALS	CLERICAL OFFICE	NURSING HOME EMPLOYERS	HOSPITAL PROF. EMPLOYEE	SCHOOL TEACHER	HOTEL HOTEL DUDE RANCH	RESTAURANT BAR
MONTANA																				
State Fund	10.21	10.21	38.22	15.85	6.17	4.38	10.42	19.89	24.73	16.59	1.17	8.11	5.33	0.98	0.37	9.71	1.67	0.28	5.08	3.44
Private Insurer (1)	a)14.30	a)18.83	a)67.91	a)45.50	12.45	9.53	23.15	40.15	33.58	32.38	3.08	12.41	9.34	1.66	1.05	15.67	2.98	0.60	10.52	7.16
ALASKA																				
Private Insurer	11.64	14.82	44.24	44.24	11.06	8.23	16.65	16.51	28.54	19.43	2.97	12.14	7.86	1.05	0.64	8.06	2.12	0.62	5.71	4.55
ARIZONA																				
Private Insurer	8.58	12.61	15.96	15.96	5.69	7.88	17.06	21.28	22.51	13.62	2.25	9.03	5.51	0.72	0.48	8.42	2.76	0.53	6.22	4.30
CALIFORNIA																				
Private Insurer	b)11.99	22.08	27.41	27.41	c) 9.22	d) 7.81	c)20.34	c)20.34	24.18	17.44	4.43	11.59	e) 5.96	1.38	0.78	11.25	3.66	2.21	10.39	6.65
COLORADO																				
Private Insurer	11.46	17.30	61.35	61.35	8.78	5.20	21.08	16.92	28.63	13.35	1.77	10.09	6.38	0.94	0.44	9.68	1.94	0.59	6.44	3.80
HAWAII																				
Private Insurer	11.55	15.87	102.85	102.85	7.27	9.98	22.67	32.61	23.82	16.37	2.42	11.47	7.85	1.37	0.90	5.45	3.29	0.92	5.54	4.86
IDAHO																				
Private Insurer	7.50	11.22	20.41	20.41	4.09	4.78	12.34	13.99	12.15	10.38	1.58	6.52	5.00	f) 0.79	0.41	7.47	2.99	0.44	5.39	3.89
IOWA																				
Private Insurer	7.55	6.63	31.63	31.63	6.77	4.82	6.80	11.50	20.78	10.49	1.11	4.50	3.58	0.68	0.23	3.19	0.78	0.31	2.24	1.92
KANSAS																				
Private Insurer	5.94	6.76	19.28	19.28	4.01	3.47	9.06	8.60	12.01	9.33	1.37	4.24	3.07	0.55	0.24	3.25	0.91	0.27	2.59	2.21
MINNESOTA																				
Private Insurer	16.31	16.31	36.81	36.81	10.19	6.85	18.14	30.96	24.88	24.14	2.09	15.51	13.27	1.38	0.48	9.30	3.14	0.80	4.20	4.20
NEBRASKA																				
Private Insurer	4.92	7.39	67.46	65.20	10.28	10.78	20.88	30.79	29.58	25.40	2.43	12.08	8.74	1.41	0.81	11.36	3.38	0.68	8.05	6.22
NEW MEXICO																				
Private Insurer	11.67	11.26	41.88	41.88	10.09	5.95	14.37	19.31	28.57	16.53	3.01	10.91	8.27	1.08	0.54	5.61	2.59	0.68	5.91	4.78
OKLAHOMA																				
Private Insurer	8.22	11.82	26.91	26.91	5.35	4.41	10.60	11.24	14.49	13.26	1.72	7.74	3.57	0.86	0.40	6.82	1.64	0.42	6.18	4.37
OREGON (4)																				
Private Insurer	13.90	19.42	35.50	35.50	8.50	5.57	25.58	22.44	41.81	18.72	3.18	8.82	8.29	1.08	0.56	13.38	2.21	0.64	10.16	5.45
SOUTH DAKOTA																				
Private Insurer	b)10.13	10.58	31.00	31.00	6.12	3.67	7.11	12.88	8.92	10.34	1.37	5.66	3.36	0.77	0.38	3.42	0.95	0.42	2.57	1.91
UTAH																				
Private Insurer	4.84	6.93	16.29	16.29	3.77	3.48	8.31	8.31	8.88	9.84	0.81	5.50	3.24	a) 0.80	0.28	2.97	0.56	0.23	1.85	1.88
BY STATE FUND																				
RANKING	9/17	13/17	7/17	13/17	11/17	13/17	13/17	8/17	8/17	8/17	15/17	11/17	11/17	9/17	14/17	5/17	12/17	15/17	12/17	13/17
Rank/Total																				
1 = Highest Rate																				
BY PRIVATE INSURER																				
RANKING	2/16	3/16	2/16	3/16	1/16	3/16	2/16	1/16	2/16	1/16	3/16	2/16	2/16	1/16	1/16	1/16	6/16	8/16	1/16	1/16
Rank/Total																				
1 = Highest Rate																				

STATE SURVEYED	FARM & DRIVERS	CATTLE	LOGGING LUMBERING	LOGGING TRUCK DRIVERS	PLUMBERS	ELECTRICAL WIRING	RESIDENTIAL CARPENTRY	COMMERCIAL CARPENTRY	OIL & GAS WELL DRILLING	TRAILER TOWING TRUCKING	RETAIL STORE CLERK	YARDS BUILDING MATERIALS	AUTO REPAIR & SERVICE	PROFES-SIONALS	CLERICAL OFFICE	NURSING HOME EMPLOYERS	HOSPITAL PROF. EMPLOYEE	SCHOOL TEACHER	HOTEL MOTEL DUDE RANCH	RESTAURANT BAR
MONTANA																				
State Fund	10.21	10.21	38.22	15.85	8.17	4.38	10.42	19.89	24 73	16.59	1.17	8 11	5.33	0.98	0.37	9.71	1.67	0.28	5 08	3 44
ARIZONA (2)																				
State Fund	8.58	12.61	15.96	15.96	5.69	7.88	17.06	21.28	22.51	13.62	2.25	9.03	5.51	0.72	0.48	8.42	2.76	0.53	6.22	4 30
CALIFORNIA																				
State Fund	b)11.89	22.08	27.41	27.41	c) 9.22	d) 7.01	c)20.34	c)20.34	24.18	17.44	4.43	11.59	e) 5.96	1.38	0.78	11.25	3.66	2 21	10 39	6 65
COLORADO																				
State Fund	11.46	17.30	61.35	61.35	8.78	5.20	21 08	16.92	28.63	13.35	1.77	10.09	6.38	0.94	0.44	9 68	1 94	0.59	6 44	3 80
IDAHO																				
State Fund	7.50	11.22	20.41	20.41	8.09	4.78	12.34	13.99	12.15	10.38	1.58	6.52	5 00	f) 0.79	0.41	7.47	2.99	0 44	5 39	3 89
MINNESOTA																				
State Fund	13.60	13.60	30.68	30.68	8 49	5.04	15.12	25.80	20.74	20.12	1.74	12.93	6 34	1.15	0.40	7.75	2 62	0.67	3 50	3.50
NEVADA																				
State Fund	g) 9.85	20.98	12.00	12.00	h) 9.66	5.83	i)14 67	i)14.67	10.60	5.97	j) 2.40	8.03	5.97	k) 0 44	0.51	7.20	3.05	1 07	l) 5 05	m) 3 40
NORTH DAKOTA (3)																				
State Fund	8.95	8.95	13 31	13.31	7.56	2.60	7.46	7.46	12.51	13.40	0 83	3 32	4.75	1.41	0.25	1.80	1.80	0.47	2 18	1 83
OKLAHOMA																				
State Fund	8 55	12.02	28 01	28.01	5.50	4.47	10.61	11.43	14.72	13.49	1.75	8 05	3 63	0.88	0.40	6.92	1.66	0 41	6 30	4 43
OREGON (4)																				
State Fund	15.05	21.03	38 45	20.28	9 20	6 03	27 72	24 31	45 29	20 28	3 45	9 56	8 98	1 17	0 81	14 51	2.39	0 69	11 01	5 90
UTAH																				
State Fund	3.63	5.20	12.22	12.22	2.83	2.61	6.23	6.23	6.07	7.23	0.81	4.13	2.43	a) 0.45	0.21	2.23	0.42	0.17	1.39	1.41
WASHINGTON (5)																				
State Fund	11.23	22.15	40.06	16.01	8.65	5.05	17.10	18.20	12.43	18.53	3.28	5 97	5.17	0.54	0 92	9.54	4.50	1.21	9.99	6.54
WYOMING (6)																				
State Fund	1.54	1.54	3.80	3.80	3.80	3 80	3.80	3 80	3.40	3.80	0 61	1 61	1 12	0 39	0 11	0.90	0.90	0 70	1 70	0 75
BY STATE FUND RANKING Rank/Total 1 = Highest Rate	6/13	10/13	4/13	9/13	8/13	10/13	10/13	5/13	3/13	6/13	10/13	6/13	7/13	5/13	10/13	3/13	10/13	12/13	8/13	9/13

LEGEND

a) These rates apply to a minimum $750 premium
b) Average crop class
c) Rate for wages < $17.00/hour
d) Rate for wages < $18/hour
e) Auto dealers only
f) Attorneys = 8.27
g) $14.71 = combination - Field crop = $9.85
h) $9.66 wages < $15/hr - $8.92 > $15/hr
i) $14.67 wages < $15/hr - $12.83 > $15/hr
j) Classed by type of store - Range to $5.52
k) Classed by type of professional/Range to $.84
l) Dude ranch = $20.38
m) Bar = $3.10
n) Attorney = $.10 State Fund
Attorney = $.13 Private

(1) The rates reported this period are from a different carrier
(2) Manual rates are same for all carriers but carriers may offer deviations to guaranteed cost policyholders
(3) The payroll base for all classifications is limited to $3600 annually
(4) SAIF utilizes a 3-tier rate system
Rates reported are standard rate
(5) State Fund utilizes an hourly rate. Rate per $100 was calculated using 1986 Montana average wage per industry.
(6) Classification system has only been in use a few years.
Does not use NCCI codes.

Exhibit # 2
5/21/90 HB 2

A Bulletin for ALEC Leaders About State, Federal and Local Issues

November 17, 1989

STATE ISSUES

Workers' Compensation Crisis Escalates: Skyrocketing medical costs and increasing costs of litigation are forcing state governments to confront dramatic increases in the cost of workers compensation insurance. The rate increase will mean billions of dollars in additional costs for industry and could severely damage the economies of many states. At the same time benefits have actually decreased for many workers. Among the states facing major rate increases:

COLORADO: Colorado insurers have asked for a 30% rate increase next year, on top of 51.3% increases over the past three years. Governor Roy Romer, noting that the legislature has passed 39 workers compensation bills over the past six years, has called for comprehensive reform and warned "Colorado can not afford to have a workers' compensation system that drives people out of business or keeps new businesses from locating here."

FLORIDA: State Insurance Commissioner Thomas Gallagher has granted Florida insurers a 36.7% increase in workers' compensation premiums. Recent studies have shown that insurers were paying $1.58 in claims for every $1 collected in premiums. Mr. William Herrle, Florida Director of the National Federation of Independent Business, warned that the rate hike could cripple small businesses, saying, "This rate hike is a clear message that substantive improvement {in the workers' compensation system} cannot wait."

KANSAS: The State Insurance Commissioner is currently considering a request for a 22.6% rate increase.

MASSACHUSETTS: Insurance companies that provide workers' compensation insurance in Massachusetts are asking the state for a 42.6% rate hike, which is expected to cost employers an extra $600 million per year. Coming at a time when the Dukakis Administration is seeking new business taxes, the rate increase could prove particularly devastating for business in the Bay State.

NORTH CAROLINA: North Carolina insurance companies have announced plans for a an increase of 16.8% in rates for workers' compensation insurance.

OHIO: The Ohio Industrial Commission earlier this year approved a 9.5% increase in workers' compensation premiums. Although the overall average increase was only 9.5%, some industries will face much steeper

Exhibit # 2
5/21/90 HB 2

Select Committee on Workers' Compensation

A Joint Committee of the 51st Montana Legislature

38 CAPITOL
HELENA 59620
(406) 444-3064

SENATE MEMBERS
GARY C. AKLESTAD
CHAIRMAN
PAUL S. SVRCEK
GENE THAYER
BOB WILLIAMS

HOUSE MEMBERS
JERRY L. DRISCOLL
VICE CHAIRMAN
MARY ELLEN CONNELLY
WILLIAM E. (BILL) GLASER
LUM OWENS

COMMITTEE STAFF
PAUL E. VERDON
RESEARCHER
MARY KELLY MCCUE
JOHN MACMASTER
ATTORNEYS

h 2, 1990

Members of Select Committee on Workers' Compensation
: Mary McCue

Survey of surrounding states to compare state funds

H DAKOTA 79% rate increase over past 4 years

North Dakota operates as an exclusive state fund and has e the inception of workers' compensation laws in that state. workers' compensation insurance is written through the state . The fund presently has an unfunded liability of about 5 million. In the early 1980s, premium rates were reduced a number of years. Since 1986, the rates have steadily eased; in 1989, they increased an average of 60%, to oximately the 1981 levels.

As to ratesetting, North Dakota does not belong to the ional Council of Compensation Insurance (NCCI). The executive ector of the state fund, upon the advice of a private emaker, sets the rates. The state's insurance commissioner no authority over the workers' compensation system in North ota.

Recently new actuarial approaches have revealed serious iciencies in the rate levels. The state fund projects that it take about 5 years of rate increases and cost containment sures to put the fund back in a solvent position. The fund

projects it will need a 20% to 30% average rate increase next year. The state fund's only sources of income are from premium and investment income on its reserves. It presently is considering, but has not implemented, a surcharge on all premium to help fund the unfunded liability.

Claims costs have increased dramatically over the same period as a result of expanded utilization of benefits and increased medical costs. Cost containment measures the fund has implemented include increased claims staffing, audits of medical bills, case review of medical cases, and limitations on the payment of attorney fees upon appeal.

WYOMING

Wyoming does not have a compulsory workers' compensation law as to nonextrahazardous employees and occupations as most other states do. Only hazardous employments must be covered. However, employers may provide coverage to their nonextrahazardous occupations through the state fund. The state legislature has been responsible for setting the state fund premium rates, and the rates have been set too low in recent years to adequately fund the insurance system. For the past 2 years, the state fund has been phasing in rate increases, although presently there is a 1 1/2% rate cap that may be removed in 1990.

The state fund presently has a projected unfunded liability of $130 million. Last year it experienced a cash flow problem and on July 1, 1989, placed a 12% surcharge on all premiums to help fund the unfunded liability. It also borrowed $32 million from the mineral resource severance tax fund and other sources. Under the terms of the loan, certain amounts are forgiven and other amounts must be repaid by the state fund by 1997.

IDAHO 41% rate increase over past 5 years

Idaho has a three-part workers' compensation system similar Montana's. The state fund is not required to insure any

ployer; however, it does have a monopoly on public employers. ere is no assigned risk pool in Idaho at this time.

About 50% of Idaho's employers insure with the state fund; ose 50% pay about 36% to 38% of the insurance premium paid in e state. The state fund spends about 12% of net premium to erate its fund.

Rates in Idaho are promulgated by the NCCI. The rates are omitted to the director of the department of insurance for proval. The regulated rate prevails with all carriers.

In the past 5 years in Idaho, rates have risen 41%. In 90, there was an overall increase of 7.2%. This amount was proved by the director after NCCI recommended an increase of 2%. The state fund voted against any increase because it felt did not need one.

According to the Idaho state fund bureau chief of derwriting, the current financial condition of the Idaho state nd is excellent. There are no unfunded liabilities, and the obligated surplus ratio is slightly less than 1 to 1, premium surplus. The Idaho state fund has never had an unfunded bility. In the dividend year that was distributed in January 0, 63% of state fund policyholders had zero claims.

The director of the Idaho department of insurance examines state fund every 3 years as is done for private insurers. state fund is also examined every 2 years by the legislative itor. The state fund pays for both audits.

Idaho, like nearly every other state, has experienced elerated claims trends in the 1980s. Medical costs have risen matically. The Idaho state fund has four registered nurses on staff who audit medical provider bills and assist in abilitation work. In December 1989, the fund disallowed

$1,880 per day in undocumented medical provider charges.

In Idaho, there is a separate insurance company, the Associated Loggers' Exchange, that insures most of the employers in the logging industry. It is a nonassessment reciprocal company that is owned by its member policyholders. Although it is exempt from the requirement that other workers' compensation insurers in Idaho belong to a ratesetting organization, Associated joined NCCI several years ago and uses its rates, with some deviation. Presently, Associated's rate for logging is $25.11; the Idaho state fund's logging rate is $29.54.

COLORADO 150% rate increase over past 8 years

Colorado also has a three-part system similar to Montana's. The state fund uses NCCI rates, and premium rates are virtually the same for all insurance companies writing workers' compensation policies in Colorado. This has always been the case. The state fund offers a 3-year loss ratio discount to all employers that ranges from zero to 38% off standard rates. The state fund's rates are regulated by the state insurance commissioner.

Presently the state fund is solvent. All revenue derives from premium and investment income. Over the past 8 years, the state fund has increased its rates an average of 150%.

Although the state fund has experienced a gradual decrease n its number of claims, the average cost per claim is rising at rate of about 10% per year. Although the state fund has nstituted medical cost containment measures that include nternal case management by doctors and nurses, hospital tilization review, and automated medical fee scheduling, its edical costs are still rising 11% to 13% per year.

19½% increase

C&B CONSULTING GROUP

Exhibit # 2
5/21/90 HB 2

November 30, 1989

r. Paul E. Verdon
taff Researcher
elect Committee on Workers' Compensation
oom 138
tate Capitol
elena, Montana 59620

e: Response to Committee Member Questions

ear Mr. Verdon:

response to your letter of October 30, 1989, attached you will find my answers to the estions raised by members of the Select Committee. As discussed in our telephone nversation, I have responded to all questions that I felt were directly applicable to State Fund tuarial issues, and have ignored those questions which address issues of which I have complete or limited knowledge.

lan to attend the December 7 meeting in Helena. If at all possible, I would greatly appreciate eiving, in advance of the December 7 meeting, copies of the written answers to the mmittee members' questions prepared by the other respondents.

Sincerely,

Drew James, FSA
Vice President and
Senior ~~Consulting~~ Actuary

Mr. Pat Sweeney, Division of Workers' Compensation

Fifty Fremont Street 24th Floor San Francisco, CA 94105
(415) 979-0600 FAX (415) 979-0177
Actuarial, Benefits & Compensation Consulting
A CORROON & BLACK COMPANY

Exhibit # 2
5/21/90 HB 2

RESPONSE TO QUESTION RAISED BY SELECT COMMITTEE ON WORKERS' COMPENSATION

In the 1985 report to the Division of Workers' Compensation, C&B Consulting Group estimated unfunded liability at $29 million. That figure was audited by Peat Marwick. Because of the $29 million estimate, the Governor called together a study commitee. By the time of the 1987 legislative session, the unfunded liability had grown to $81 million which caused cuts in benefits. When the 1989 legislature convened, the unfunded liability was estimated at from $157 million to $215 million. What caused the great difference? Are the rates now in effect adequate?

Answer to the first question:

The method used to the determine the claims liabilities and reserves of the Fund is largely dependent upon claims patterns exhibited in prior years. To the extent that there is an undetected shift in claims patterns, the method slowly reacts as this shift emerges through claims experience.

It is now evident that there were significant accelerations in incurred claims trends in the early 1980's that continued through 1986. The most dramatic increase took place with respect to accidents that occurred in 1983 and 1984; claims (per dollar of covered payroll) increased almost 50% over that two year period alone. Over the seven accident years ending with 1986, compensation claims increased 134% and medical claims increased 155%, when expressed per dollar of covered payroll. The substantial increase in the unfunded liability from $29 million as of June 30, 1985 to $217 million as of June 30, 1989 is as a direct result of the slow emergence of this shift in claims trends over that four year period.

In addition to Peat Marwick's review which confirmed C&B Consulting Group's (then Coates, Herfurth & England's) $29 million unfunded liability estimate as of June 30, 1985, another independent actuary reviewed our June 30, 1986 calculation of the unfunded liability. This review confirmed our results as well. We are therefore confident that the slow emergence of this shift in claims trends was not unique to our methodology.

Answer to the second question:

During the 1989-90 Fiscal Year, about 27% of the Fund's revenue will be derived from temporary non-premium sources. Of this total, 17% is from the supplemental revenues allocated by the legislature during the 1989 session which are available this year only. The remaining 10% is from the payroll taxes pursuant to HB 884 which is scheduled to sunset on June 30, 1991. As these temporary revenues run out, premiums will need to adjusted accordingly. It should also be added that the present freeze on both the Average Weekly Wage and physician's fee schedule is scheduled to come off effective July 1, 1991. When this happens, premiums will need to be adjusted by 5% to provide for the resulting higher benefit levels.

It should be stressed that a major determinant of the future financial position of the Fund is the success or failure of SB 315 to attain the 20% to 25% reduction in claims levels presently expected.

11/30/89

Exhibit # 2
5/21/90 HB 2

e main question for workers' compensation fund actuary: What ommendations has he made that the state has not followed?

ce 1985 there have been two occasions at which the State Fund has elected not to follow our ce. The first was in October 1986 when we recommended that a special rate increase of at t 34.4% be made effective as of January 1, 1987. The Fund elected to hold this rate increase 7%. The second occasion was in April 1987 when SB 315 and HB 884 were enacted. We mmended a rate increase of 1.1% be made effective as of July 1, 1987 in addition to an erience rerate as of that date. The experience rerate would have realigned premiums rates lass codes to reflect claims experience over the prior twelve months. The State Fund decided rego the rate increase and hold off on the experience rerate until 1988.

e could wipe out the unfunded liability entirely and could start from zero, would the rates compare? Give some representative examples.

ientioned in a previous answer, during the 1989-90 Fiscal Year, about 27% of the Fund's nue will be derived from temporary non-premium sources. This supplemental revenue amount to approximately $33,381,000 during this year. During this same year oximately $31,714,000 is needed to amortize the unfunded liability. Thus, assuming that e supplemental revenues would not be available in the absence of an unfunded liability, the ent premiums are really unaffected by the presence of the unfunded liability. However, as pointed out in a previous question, the disappearence of these revenues over the next two s will require rates to be increased. As of July 1, 1990, premiums will be about 20% r than they would have been in the absence of the unfunded liability. As of July 1, 1991, iums will be about 32% higher than they would have been in the absence of the unfunded ity.

uld be stressed that a major determinant of the future Fund premium rates is the success lure of SB 315 to attain the 20% to 25% reduction in claims levels presently expected.

n did the State incur the workers' compensation debt and what has been done ake it better or worse?

nfunded liability was first identified during the July 1,1985 ratemaking process in April Inadequate premium rates caused the unfunded liability to increase until June 30, 1987 reform legislation was passed (SB 315). At that point the unfunded liability levelled out emained relatively constant over the next two years. The levelling out was due in part to a on to delay building the amortization of the unfunded liability into the premium rates until , 1988. It is now anticipated that the unfunded liability will be fully amortized by June 997.

uld be stressed that a major determinant of the future financial position of the Fund is the ss or failure of SB 315 to attain the 20% to 25% reduction in claims levels presently ed.

11/30/89

Exhibit # 2
5/21/90 HB 2

workers' compensation insurance rates are increased by 20% for two years s the actuary recommends, how much will be raised to service the debt?

ne rate increases are expected to raise the following amounts to amortize the unfunded ability:

Fiscal Year Ending in:	Revenue Raised to Amortize Unfunded Liability
1991	$32,665,000
1992	33,645,000
1993	34,655,000
1994	35,694,000
1995	36,765,000
1996	37,868,000
1997	39,004,000
Total	$250,296,000

11/30/89

EXHIBIT 3
DATE 5/21/90
HB 2

MONTANA CHAMBER OF COMMERCE
P. O. BOX 1730 • HELENA, MONTANA 59624 • PHONE 442-2405

Testimony of the
Montana Chamber of Commerce
by
Jim Tutwiler, Public Affairs Manager
on House Bill (Workers Compensation)
in the Special Session
May 21, 1990

For the record my name is James Tutwiler representing the ntana Chamber of Commerce. The majority of our some 1,000 mbers are small businesses located throughout Montana.

Our purpose in appearing here today is not to oppose solving e State Fund's liability problem but to oppose the manner in ich the bill before you addressed that problem.

Of upmost concern to many Montana businesses is the position of a payroll tax. As we are all well aware, a mporary payroll tax was enacted in 1987 to June 30, 1991. Since actment employers have been paying about 13 million a year. The ll here in question would authorize the payroll tax for an ditional 30 years and cost employers in this state as much as 2 million dollars. We believe such a tax is unwise and warranted. A payroll tax adds significantly to existing siness taxes in Montana that, today, are among the highest in e nation. A payroll tax is an inequitable tax because it

requires all employers, whether or not they subscribe to the state fund, to pay. And most certainly a payroll tax is a tax on jobs. It forces employers who pay the best wages to pay the most tax. We should be moving, and the legislature made a start in 1989, to bring Montana's business taxes in line with taxes in competing states. Adding a 30 year payroll tax now in this Special Session moves us in the wrong direction.

Montana businesses are understandably skeptical of reports of the amount of the unfunded liability and what that liability represents.

We must confess to our own frustration and lack of expertise regarding the unfunded liability's true size, why it continues to grow, and how and when and who should pay the bill. We did the best we could by asking Ernst and Young, a nationally recognized firm experienced in workers compensation actuarial and management matters, for their advice and assistance. After examining current reports on the State Fund, Ernst and Young concluded that the latest calculation of funding requirements does not appear to employ generally accepted casualty actuarial techniques appropriate to workers compensation insurance. The firm also cautioned that there is considerable uncertainty surrounding unfunded liability projections and that we ought to be aware of this uncertainty in deciding any long term funding plan.

Our point here is that neither our own statewide business community nor experts in the field are convinced the state fund truly knows the size of the unfunded liability and payment patterns.

Under these circumstances we urge this committee not to

approve a bill which commits the state to a long term funding plan that costs employers over 600 million dollars for a debt of undeterminable size.

(A complete account of Ernst and Young's observations and suggestions is attached to this testimony.)

Members of the committee, we should also point out the bill before you purposely and significantly expands the state's direct control of the Fund's operation. Specifically, Section 8 of the bill would require the Fund's management to follow the Montana Administrative Procedures Act in setting premium rates. Such a degree of oversight is excessive and possibly detrimental to timely and responsive decision making we can and should expect from the Fund's directors. While there has been severe criticism of workers compensation past management, the new management team has given every indication it can and is correcting the problems that have continued to plague the workers compensation system. We believe they ought to have that opportunity to succeed.

The business community believes this bill will channel a lot of employer payroll tax dollars to a liability whose dollar amount is unknown. However, the alternative of taking no action and allowing premium rates to rise on the average of 24% this year and next are equally devastating. Is there another alternative? We believe there is.

It is the business community's hope and our recommendation that this committee consider an alternative which (1) Postpones the imposition of a long term payroll tax and the issuance of bond authority. (2) Provides for the continued

solvency of the State Fund through June 30, 1991 by making a combined use of General Fund appropriations, Fund Reserves, payroll tax and premium rate adjustment. (3) Requires the immediate undertaking of a comprehensive analysis of the Fund by a casualty actuary so that the legislature and the business community of Montana can by early 1991 have a sound estimate of the Fund's true liability upon which a funding strategy can be devised.

Members of the Committee, we thank you for the opportunity to express our views on this extremely important issue.

Exhibit # 3
5/21/90 HB 2

Ernst & Young

277 Park Avenue
New York, New York 10172
Telephone: (212) 773-3000
Fax: (212) 773-1996 / 1997
Telex: 177704

May 19, 1990

Montana Chamber of Commerce
P. O. Box 1730
Helena
Montana 59624

Re: Emergency Funding for
State Compensation Mutual Insurance Fund

Dear Sirs:

Thank you for contacting Ernst & Young for actuarial assistance in your evaluation of the proposed funding for the Montana State Compensation Mutual Insurance Fund. Based on the information available for review and the urgency of the issues, I conclude as follows:

1. Whether measured in terms of a present value in excess of $200,000,000 or future payments on the order of $400,000,000, a substantial commitment by the people of Montana is proposed. Accordingly, it is important to consider all aspects and weigh alternatives.

2. Available information on funding needs, risks and alternatives is limited.

   a. The latest calculation of funding requirements does not appear to employ generally accepted casualty actuarial techniques appropriate to workers' compensation insurance. The presentation resembles a pension evaluation.

      There are various areas of specialization within actuarial science. Workers' compensation falls within casualty actuarial science, not pension.

      Although there are no statutorily binding standards for rates used by the State Compensation Mutual Insurance Fund, evaluations using generally accepted casualty actuarial techniques are important information that should be available to the Montana legislature.

Relevant sources of Fund revenues are (A) premiums, (B) payroll tax, (C) investment income, and (D) potential supplemental revenue provided by the legislature analogous to the $20,000,000 in supplemental revenue appropriated for the 1990 fiscal year. Assuming the accuracy of the projections, any combination of funds from these four sources will enable the State Compensation Mutual Insurance Fund to achieve its financial objectives for 1991.

Relative to estimated premium of $95,994,000 and payroll tax of $13,283,000 for 1990, the target of $135,161,000 represents an increase of $25,884,000.

Countrywide increases in workers' compensation rates have averaged approximately 7.5% per year. (Available data does not permit analysis of a rate level increase based on Montana data. The latest National Council on Compensation Insurance filings should be consulted.) Because there was no increase in Fund rates at July 1, 1989, an increase of 15% in current Fund rates would not be out of line with national benchmarks.

Using values from the latest Fund projections, a 15% increase would generate approximately $13,343,000 in additional collected premiums, leaving $12,541,000 to be generated from other sources. By way of comparisons, the latest Fund projection requires a 24.34% rate increase without benefit of additional revenues other than incidental increases in payroll tax.

These are not the only possible funding strategies. A variety of alternative approaches is available and should be considered.

To sum, a long-term financing commitment at this time would be based on weak actuarial foundations. There are alternative financing strategies that would facilitate a decision based on better information.

Ernst & Young is pleased to have been of service in your request for objective appraisal of financing alternatives. We enjoyed working with you and look forward to working with the Montana Chamber of Commerce again.

Sincerely,

Alfred O. Weller

Alfred O. Weller
Senior Manager, FCA, FCAS, MAAA

enc.: Summary of Reviewed Information

ERNST & YOUNG

Ernst & Young

Exhibit # 3
5/21/90 HB 2

ALFRED O. WELLER

ERNST & YOUNG

==========

Alfred O. Weller joined Ernst & Young as a Senior Manager in November 1987. His responsibilities have included management and casualty actuarial consulting, risk management services, and audit support. Among his clients are large and small companies; self-insurers, primary insurers and reinsurers; new ventures and established companies.

Before joining Ernst & Young, Al Weller was Vice President and Chief Actuary of the Risk Management Division of Fred. S. James & Co., Inc. From 1983 to 1985 he was a Vice President of BRI Coverage Corporation. From 1981 to 1983 Vice President of Casualty Actuarial Services Division of Frank B. Hall and Company, Inc. From 1978 to 1981, Director of Actuarial Services at Continental Insurance Companies . From 1971 to 1978, Mr. Weller rose to the position of Senior Actuary on the Executive Staff of the National Council on Compensation Insurance.

Al Weller is a Fellow of the Conference of Actuaries in Public Practice, a Fellow of the Casualty Actuarial Society, and a Member of the American Academy of Actuaries. He has been active in the Committee work and professional activities of these organizations. Currently, he serves on the Board of Directors of the Conference of Actuaries and various Committees. He has been a speaker at the Casualty Loss Reserve Seminar, RIMS meetings, and other professional societies, and he has published articles in the various actuarial publications. He is also a past President of Casualty Actuaries of Greater New York.

Al Weller is a graduate of Swarthmore College and holds a masters degree in mathematical statistics from Indiana University.

EXHIBIT 4
DATE 5/21/90
HB 2

OUTLINE FOR HB-2 TESTIMONY 5-21-90

NAME & REPRESENTATION

THE IIAM MUST RISE IN STRONG OPPOSITION TO HB-2

I REGRET NOT BEING ABLE TO PROVIDE WRITTEN TESTIMONY, BECAUSE WE HAVE JUST RECEIVED A COPY OF THE FINAL BILL

HB-2 CONTINUES TO MOVE THE STATE FUND FROM THE CATEGORY OF BEING A PROPRIETARY FUNCTION TO ONE OF BEING A GOVERNMENT FUNCTION. WE BELIEVE THIS IS WRONG AND A DANGEROUS COURSE.

WE BELIEVE THAT HB-2 ONLY DEALS WITH THE SYMPTOMS OF THE PROBLEMS WITH W/C AND NOT THE UNDERLYING CAUSES OF THESE PROBLEMS.

WE URGE THE LEGISLATURE NOT TO DEAL WITH THIS MAJOR PROBLEM BY SIMPLY THROWING MONEY AT THE PROBLEM IN THIS HURRIED, QUICK-FIX MANNER.

BEFORE THE MONTANA LEGISLATURE VOTES ON THIS BILL, OR VARIATIONS OF THIS BILL, WE BELIEVE THAT THERE ARE MANY QUESTIONS THAT MUST BE ASKED AND ANSWERED.

HERE ARE A SAMPLE OF SOME OF THESE QUESTIONS.

In the last two fiscal years, the State Workers' Compensation Fund has collected nearly $24 million from an Employer's Payroll Tax. In addition, the June, 1989, Special Session of the legislature appropriated $20 million from the state general fund to the State Workers' Compensation Fund. Despite this "infusion" of money, the negative surplus (unfunded liability) position of the State Fund had grown to about $200 million by 12/31/89.

****Remembering that the payroll tax and general fund appropriation were to allegedly help reduce the unfunded liability, why has it continued to grow?**

****Won't additional and continued subsidies of the state fund in the form of taxpayer dollars simply serve to perpetuate and possibly increase the problem of not collecting enough premium to pay costs and push these deficit problems more and more onto the Montana taxpayer in the future?**

The Montana Workers' Compensation State Fund reported a deficit of over $60 million in fiscal year 1989.

****What is the accurate condition of the program? Does anyone really know?**

Exhibit # 3
5/21/90 HB 2

Unlike the premium classification system of Workers' Compensation, which charges a higher premium for more hazardous occupations and a lower premium for less hazardous occupations, the payroll tax is a flat ~~.003~~ .28 of 1% (~~.003~~) of each and every employer's payroll.

**Does not this flat payroll tax place a disproportionately high burden on those employers in low hazard occupations, such as teachers and clerical, while placing a disproportionately low burden on those employers in high hazard occupations, such as logging, roofing contractors trucking and mining, whose employees often use the system the most?

**With employers such as school districts state and local governments, isn't the Montana state taxpayer further burdened with the payroll tax?

**Since some private employers are able to pass this payroll tax along to consumers, doesn't the payroll tax act as another hidden sales tax?

Montana law requires that, "The State Fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the cost of administration, benefits, and adequate reserves for the purpose of keeping the State Fund solvent, . . ." (39-71-2311, MCA).

**Why has state run workers' compensation been allowed to violate Montana law?

1988 Leg F.A Report

**Since it seems obvious that present premium levels are inadequate to pay all costs, does that mean that rates will need to increase anyway.

AS YOU ARE ALL AWARE, THIS IS A GROWING NATIONAL PROBLEM

MANY STATES AND NATIONAL COALITIONS HAVE RECENTLY DEALT WITH THESE W/C PROBLEMS ON A BROAD RANGE. SEVERAL STATES HAVE PASSED BROAD COMPREHENSIVE LEGISLATION WITHIN THE LAST YEAR.

THE IIAM COMMENDS THE MONTANA LEGISLATURE FOR W/C LEGISLATIVE EFFORTS IN THE LAST THREE YEARS. WE REGRET THAT, IN MANY CASES, THESE LEGISLATIVE ACTIONS HAVE NOT ACHIEVED THE DESIRED EFFECT.

WE BELIEVE THE ONLY RESPONSIBLE COURSE OF ACTION IS TO ADDRESS THE COMPLETE WORKERS COMPENSATION SYSTEM. TO FIX THOSE PARTS OF THE SYSTEM THAT ARE BROKEN AND STRENGTHEN THOSE PARTS THAT ARE NOT.

Exhibit # 4
5/21/90 HB 2

THE FUNCTIONS AND SYSTEMS OF W/C PROGRAMS ARE FAR TO COMPLEX AND VARIED TO DISCUSS IN THIS HEARING. AS A BRIEF EXAMPLE OF THE AREAS WE SUGGEST, I OFFER THE FOLLOWING:

PROVISION OF ADEQUATE BENEFITS TO INJURED WORKERS WHILE ADDRESSING THE ISSUE OF MALDISTRIBUTION OF BENEFITS.

STRONGLY ENCOURAGING EMPLOYER PARTICIPATION IN PREVENTATIVE SERVICES

WORKERS' COMPENSATION EDUCATION (these include)
*APPROPRIATE HIRING PRACTICES EDUCATION
*EFFECTIVE AND ONGOING SAFETY TRAINING
*COMPENSATION AND INCENTIVES TIED TO A SAFE WORK ENVIRONMENT
*EDUCATION OF EMPLOYERS AND EMPLOYEES ON THE STATE'S W/C LAW
*EARLY INTERVENTION OF MEDICAL MANAGEMENT AND/OR VOCATIONAL REHABILITATION

MEDICAL COST CONTAINMENT

VOCATIONAL REHABILITATION

***

THESE ARE ONLY A VERY FEW OF THE MANY AREAS OF THIS SYSTEM THAT SHOULD BE REVIEWED AND POSITIVE CHANGES IMPLEMENTED.

THE IIAM HAS BEEN INVOLVED WITH THE MONTANA W/C PROBLEMS FOR MANY YEARS AND WE RENEW OUR PLEDGE TO WORK WITH THE LEGISLATURE AND FELLOW MONTANANS TO ACHIEVE EFFECTIVE AND LONG LASTING SOLUTIONS TO THE WORKERS' COMPENSATIONS SYSTEM.

WE BELIEVE THE MONTANA EMPLOYERS, EMPLOYEES, AND THE GENERAL MONTANA TAXPAYER DESERVE A COMPLETE REVIEW AND REPAIR OF THIS SYSTEM RATHER THAN CONTINUED PATCH WORK SOLUTIONS.

WE URGE A DO NOT PASS ON HB-2

EXHIBIT 5
DATE 5/21/90
HB 2

SUCCESS IN TEXAS!

orkers compensation insurance reform eluded exas legislature through the 1989 regular and pecial session, but one day before the second l session concluded the Senate voted 18 to 13 in of S.B. 1, a legislation reform package. rnor Bill Clements (R) signed the bill into law on mber 13, 1989. As of January 1, 1991, oyers, employees, and insurers will officially be ng under the reformed law.

orkers compensation reform was finally achieved ge part due to the mobilization of the business unity. During the Second Special Session, the business community acted in concert under the ion "Jobs for Texas." This coalition operated e banks and generated thousands of letters to ors. Insurance companies involved employers by raging policyholders to ask legislators to support ingful workers compensation reform.

business community representative addressed Texas Compensation Insurance Association's A) Board of Directors on December 14, 1989, anked the insurance industry for its support in form effort. The representative commented that 's decision not to enter into a public debate with lawyers was a decisive factor in achieving ngful reform. The representative also indicated tters and phone calls generated by insurance anies and agencies had an impact on Senate ers.

st month, the Alliance Workers Compensation tment held a briefing for its member companies xas' new workers compensation law. Speakers ed House sponsor Representative Richard Smith yan), Industrial Accident Board Chairman Joe , State Board of Insurance board members e Howard and Dick Reynolds, and Texas rs Compensation Assigned Risk Pool Manager McKay.

ne Alliance knows that changes in laws -- even nes -- can be complicated and confusing," said D. Millikan, Alliance vice president and or of workers compensation. "I feel this tion was successful in providing valuable ation which will make the reform process a little ier for those who attended."

e following are highlights of S.B. 1 prepared presentative Smith's Office:

orkers compensation insurance continues to be luntary; there is no mandatory coverage.

ne Industrial Accident Board is reorganized, its wer greatly expanded, and it is renamed the xas Workers' Compensation Commission. The mmission consists of three members representing employers and three members representing wage earners. The members serve on a part-time basis.

3. A Legislative Oversight Committee is established to oversee implementation of the Act and to assure compliance with legislative intent.

4. Self-insurance is allowed for large, financially stable employers. Self-insurance is backed up with strict requirements including security deposits and a strong guaranty fund to assure that all self-insurer obligations are met.

5. Attorney's fees are limited to reflect the attorney's time and effort on behalf of the claimant.

6. Loans by attorneys are prohibited. However monetary advances and acceleration of benefits to alleviate hardship are permitted.

7. An ombudsman program is created to inform employees and employers of their rights under the system and to assist with information on claims.

8. The method used to compute wages (which are the basis of employee income benefits) are changed to eliminate the artificial benefit enhancement from the 300-day rule.

9. The agency has greatly improved oversight over health care providers and their treatments and charges. Sanctions are provided for physicians or hospitals that exceed guidelines or charge more for workers compensation services than other services.

10. The basis for benefits for permanent disability is changed. The subjective "loss of wage earnings capacity" is eliminated in favor of an objective impairment system.

11. The impairment benefit is supplemented by Supplemental Income Benefits which are based on actual economic losses. This more accurately directs money to those who actually suffer losses.

12. Maximum benefits are increased from $238 per week to $416 per week; lifetime income beneficiaries receive a 3 percent per year adjustment.

13. "Doctor-shopping" is eliminated. Claimants may select a treating doctor (including a chiropractor). Changes in treating doctors may

EXHIBIT
DATE 5/21/90
2

MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary

For the record, my name is George Wood, Executive Secretary of the Montana Self-Insurers Association. I arise in opposition to House Bill 2. The bill transfers the liabilities of the State Fund to the State of Montana and then provides for payment of these liabilities by a tax on employers only.

The Concept is Flawed. The tax is placed on employers only and further the tax is levied on employers other than those insured by the State Fund to pay State Fund liabilities. The tax is a tax on jobs collected by a payroll tax as an income tax is a tax on income collected, in great part, by a withholding tax on wages and salaries.

The Collection of the Tax is Flawed. The employer who pays a higher wage pays more in taxes than one who pays a lesser wage. This is compounded because an employer who hires a greater number of employees will pay a higher tax. The tax paid by an employer who pays $10 per hour will be 2½ times as much as one who pays $4 per hour.

The Disbursement of the Tax is Flawed. The primary purpose of this bill at this time is to avoid an announced State Fund premium rate increase of 24% on July 1, 1990, and 24% premium rate increase on July 1, 1991. This would provide a rate subsidy of 24% to employers insured by the State Fund. The employers with a premium rate of $1 per hundred dollars of payroll with a subsidy of .24 per hundred dollars of payroll and an employer whose premium rate is $30 per hundred dollars of payroll with a subsidy of $7.20 per hundred dollars of payroll. The premium rate

409 Agnes • Missoula, Montana 59801 • Phone (406) 549-8849

aid represents the usage of and costs to the State Fund of each code lassification. The more usage and the higher the costs, the greater the remium rate. The bill provides, as previously indicated, the higher the te the greater the subsidy.

The bill appears to have "equal protection" problems. The use of e state's taxing power to tax employers to subsidize the premium rates other employers. The approximate initial tax, by plan would be:

Plan 1	45 employers	$2,000,000.+
Plan 2	4700 employers	$4,000,000.
Plan 3	27000 employers	$6,500,000+.

e non State Fund employers, who would receive no rate subsidy, will pay to 50% of the tax.

The figures issued for the State Fund deficit are truly awesome. om the figures, I have received, the discounted unfunded liability is w $207,000,000. This represents a State Fund liability which will quire "total projected liability payments of $375,467,000 which will quire a payroll tax income of $662,966,277. To use the words in the ll "it may increase."

The figures are awesome and leaves one with doubts of their lidity. When State Fund legislation was passed during the session in 89, we heard a figure of $157,000,00; since then we have heard 97,000,000 then $217,000,000 then $197,000,000 and now $207,000,000. ese are the discounted figures. The actual projected liability figures uld also vary before settling now at $375,467,000.

How accurate are the present figures? We won't know until we have d an independent claim audit by knowledgeable adjusters who set

reserves on Montana claims and a review of these figures by a Certified Casualty Actuary. We would be more comfortable in advising on solution if we were sure of the monetary size of the problem. Remember, the discounted figure has risen despite employer tax payments to date of about $35,000,000 and general fund appropriation of $20,000,000.

This bill is probably premature.

The bill needs some amendments in addition to the problems previously cited.

1. The separation date is July 1, 1990, the new State Fund went into operation January 1, 1990, and the Reform Act of 1987 went into effect July 1, 1987. A date of separation other than July 1, 1990, is probably needed.

2. The State Fund is an insurer of last resort, yet provisions still remain in the bill for an assigned risk pool. If there is an assigned risk pool, the State Fund is not the insurer of last resort.

3. The bill speaks to transferring the liabilities for injuries resulting from an accident and doesn't mention the transfer of liabilities due to occupational diseases.

4. The bill is unclear as to whether the State Fund or the Board of Investments is to manage the liabilities. Are the adjusting services to be contracted or assigned the State Fund? The difference in costs may be great.

5. The bill indicates that legislative oversight should be increased but doesn't specify how this is to be done and the possible conflict with the Board of Directors. The bill should make the State Fund truly independent.

6. The bill doesn't indicate why a loan is necessary. If all te Fund assets, amounts unknown, are transferred then, of course, rt-up money is needed and should be paid from premium rates.

7. The bill removes all liabilities from the State Fund but gives m a book of business of $90,000,000 to $100,000,000 which has value ch should be assigned and payments made to the liability fund created.

8. New Section 5 has unclear language of the amount of money that be transferred annually from tax and bond revenue to the liability d.

9. The bill limits the bond issues to $220,000,000 when bilities are projected at $375,467,000.

10. Page 7 (5) unproofed draft--"all loan and bond proceeds given the State Fund must be deposited to the credit of the account required 39-71-2321 for claims for injuries resulting from accidents that urred before July 1, 1990, and may be used only for the administration payment of those claims and for the costs of giving the loan proceeds issuing the bonds. This is unclear--why would loans and bond ceeds given to the State Fund be used for the costs of giving the loan ceeds and issuing the bonds?

11. Section 7 Amendments to 39-71-2311 has some wording that is lear and some that is difficult to reconcile.

(a) The State Fund is a nonprofit, independent public poration--not a state agency, required to insure any employer uesting coverage unless an assigned risk plan is in effect. Is it an loyer of last resort or not?

(b) "Unnecessary surpluses" created by the imposition of premiums--what is an "unnecessary surplus"--who makes that judgment?

(c) "For the purpose of keeping the fund solvent, it must implement variable pricing levels within individual rate classifications . . . ." It is difficult to understand how variable pricing levels are to be used to keep the fund solvent. Are these variable pricing levels to be something in addition to those provided by accepted national standards? If so, how are these variable rates to be determined?

12. The relationship between the State Fund as a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers and the duties of the Commissioner of Insurance to enforce these laws becomes more unclear.

13. Section 7 - The State Fund is a nonprofit, independent public corporation -

Section 8 (4) - The State Fund is a state agency. Can it be both?

14. Section 9 gives the Fund's Board of Directors full power, authority and jurisdiction over the State Fund. This is in conflict with other sections of the bill which limit full power, authority and jurisdiction of the Board.

15. Rules necessary to comply with the Administrative Practices Act in setting rates for 400 classifications could be difficult to implement and, if tried, very costly to the Fund.

16. Appears new State Fund can declare dividends but not pay them to individual employers until the liabilities incurred prior to July 1, 1990, are funded--not paid. No procedure for requiring money that can be

clared a dividend be transferred to liabilities fund. It could be used r rate reductions.

17. The term "reasonable" surplus is used. How much is reasonable?

18. "The burden of this unfunded liability should not be borne by ose employers who have insured with the State Fund because the ailability of insurance to all employers through the State Fund has nefited all employers who have Workers Compensation Coverage." How?

19. The job tax starts at 0.28% but doesn't provide this is the ximum. In fact, it allows increases in the tax. Shouldn't it be up to 28%. The bill allows confrontations on payroll tax each legislative ssion.

20. Confusion in use of Department. Does it mean Department of bor and Industry part of the time and Board of Investments part of the me?

21. The bill provides:

(a) "This act is effective on passage and approval and rminates June 30, 2020."

(b) "[Sections 1 through 14 and 16 through 23] are effective ly 1, 1990."

(c) "[Section 15] is effective October 1, 1990, and applies to ges payable on or after July 1, 1990." These 3 sections when read gether seem to be contradictory.

22. What is the effect of the severability clause on this bill? It pears that the failure to obtain an affirmative vote of 2/3 of members each house somehow allows passage of bill. If this can be done, what ppens to be job tax?

This bill has innumerable problems in concepts, potential legal problems and drafting. It asks us to fund a deficit, amount undetermined, whose creation created no benefit to us, with a moveable tax rate for a period of 30 years.

That really asks us to buy a pig in a polk.

7. The bill should be reported

DO NOT PASS

George Wood
Executive Secretary

EXHIBIT 1
DATE 5/21/90
HB 2

Amendments to House Bill No. 2
Introduced Bill Copy
Prepared by the Commissioner of Insurance
May 21, 1990

1. Page 3, line 21.
Following: "[section 3]"
Insert: "and 39-71-2316(9)"

2. Page 8, line 17.
Following: "a"
Strike: "financial and"

3. Page 8, line 23.
Following: "."
Insert: "In addition, the commissioner of insurance shall biennially conduct or have conducted a financial examination of the state fund, pursuant to 33-1-401."

4. Page 10, line 13.
Strike: "reserve"
Insert: "surplus"

5. Page 10, line 19.
Following: "(2)"
Insert: "The state fund shall annually on or before September 1 file with the commissioner of insurance a full and true statement of its financial condition, transactions, and affairs as of the June 30 preceding. The statement shall be in such general form and context as is required or not disapproved by the commissioner of insurance, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner of insurance. The statement shall be verified by the oath of state fund's president or vice-president and secretary. The commissioner of insurance may, in his discretion, waive any such verification under oath.

(3) The commissioner of insurance may refuse to accept the fee for continuance of the state fund's certificate of authority, as provided in 33-2-117, or may in his discretion suspend or revoke the certificate of authority of the state fund if it fails to file its annual statement when due.

(4) Any director, officer, or employee of the state fund who subscribes to, makes, or concurs in making or publishing any annual statement or any other statement required by law knowing the same to contain any material statement which is false shall be punished by a fine of not more then $1,000.

(5) At time of filing, the state fund shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.

(6) The commissioner of insurance may impose a fine not to exceed $100 a day for each day after September 1 that the state fund fails to file the annual statement referred to in subsection (1). Such fine may not exceed a maximum of $1,000.
Renumber: subsequent subsections.

6. Page 13, line 1.
Following: "."
Strike: "Classifications and premium rates may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4."

7. Page 13, line 8.
Following: "."
Insert: "The commissioner of insurance shall have the authority to enforce the provisions of this subsection."

EXHIBIT 8
DATE 5/21/90
HB 2

DEPARTMENT OF REVENUE
PROPOSED AMENDMENTS TO H.B. 2
(INTRODUCED COPY)

1. Title, line 21
Following: "June 30, 2020;"
Insert: "TRANSFERRING ADMINISTRATION OF THE WORKERS' COMPENSATION PAYROLL TAX AND CERTAIN ACCOUNTS RECEIVABLE TO THE DEPARTMENT OF REVENUE; REQUIRING THAT REPORTS OF THE NAMES OF EMPLOYERS TO BE MADE TO THE DEPARTMENT OF REVENUE; TRANSFERRING CERTAIN ACCOUNTS RECEIVABLE TO THE STATE AUDITOR;"

2. Page 17, line 17.
Following: "39-71-401"
Insert: "except when the employer is subject to the provisions of 15-30-204(2), in which case, the payroll tax is an amount equal to 0.28% of the employer's payroll during the preceding week for all employments covered under 39-71-401"

3. Page 18, lines 9 through 15
Strike: Subsections (1)(b) and (1)(c) in their entirety.
Renumber: subsequent subsections

4. Page 18, lines 20 through 22
Strike: Subsection (1)(e)

5. Page 19,
Following: line 1
Insert: "(3) (a) On or before the last day of April, July, October, and January, every employer subject to the provisions of this part shall file a return in such form and containing such information as may be required by the department, and except as provided in (3)(b) shall pay therewith the amount of tax required by (1)(a) to be paid on the employer's payroll during the preceding quarter. Quarterly returns for employers paying weekly shall be used to summarize and adjust payments and request refunds of overpayments.

(b) An employer subject to the provisions of 15-30-204(2) shall remit a weekly payment along with their weekly withholding tax payment to the department for the amount required by (1)(a).

(c) The payment required by (1)(a) shall be made along with the payment required by 15-30-202. The department shall first credit any payment to the liability due pursuant to 15-30-202, and thereafter to the worker's compensation tax account provided in 39-71-2504.

(4) The officer or employee of a corporation whose duty it is to collect, account for, and pay over to the state amounts due under (1)(a) and who willfully fails to pay over the tax is liable to the state for the amounts so due and the penalty and interest due thereon.

(5) The return due under subsection [3] and any other information obtained by the department by audit shall be subject to the provisions of 15-30-303, provided that the department may

disclose such information to the department of labor and industry under such circumstances and conditions which will insure the confidentiality of any such information.

(6) (a) It is the responsibility of the department of labor and industry, worker's compensation division, and the state compensation mutual insurance fund to provide to the department upon the effective date of this act or as soon thereafter as is possible a list of all employers having coverage under any of the plans administered by the department of labor and industry, worker's compensation division, and the state compensation mutual insurance fund.

(b) Thereafter, the department of labor and industry, worker's compensation division, must on a weekly basis provide to the department the names all employers having coverage under any of the plans administered by the department of labor and industry, worker's compensation division, and the state compensation mutual insurance fund.

(c) The department of labor and industry, worker's compensation division, and the state compensation mutual insurance fund must provide to the department access to their computer data bases for the purpose of administering the tax provided in (1)(a)."

Renumber: subsequent subsections

6. Page 19, lines 2 through 3.
Following: "Sections"
Strike: "15-35-112 through 15-35-114, 15-35-121, and 15-35-122"
Insert: "of chapter 30, title 15 not in conflict with the specific provisions of this part"
Following: "regarding"
Insert: "administration, remedies, enforcement, collections, hearings, interest,"

7. Page 20.
Following: line 9
Insert: "NEW SECTION. SECTION 17. Transfer of accounts receivable. (1) The department of revenue shall not assume responsibility for collection of any accounts receivable which are more than 720 days past due and the accounts of any employers which are no longer engaged in business.

(2) All accounts which are more than 720 days past due and the accounts of any employers which are no longer engaged in business shall be transferred to the state auditor for collection."

Renumber: subsequent sections

8. Page 21, line 11.
Following: "Sections 1 through"
Insert: "9, 11 through"
Following: "14"
Insert: ", 16"
Following: "and"
Strike: "16"

Exhibit # 8
5/21/90 HB 2

Insert: "18"

9. Page 21,
Following: line 12
Insert: "(2) [Section 10 and 17] are effective July 1, 1991."
Renumber: subsequent subsections.

VISITORS' REGISTER

House Labor COMMITTEE

BILL NO. HB-2 DATE 5/21/90

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Char Maharg	Revenue	neither	
Roger McGlynn	IIAM Helena		✓
Doug Ward	Mt. Self Insurers Assn		✓
Gordon Morris	MACo	~~✓~~	✓
Susan Witte	w/ amendments		
JIM TUTWILER	State Ins. Depart	✓	
	MT CHAMBER		✓
Bridget Holland	Mt Retail Assn.		✓
(for Charles Brooks)			
John Delano			
Rep. Boharski	Kalispell		
Stephen Owens	Kalispell	✓	
John Fine	Helena Legislative Auditor		
Sheri Heffelfinger	Leg. Council		
Bruce W. Moerer	MT. School Bds Assn		✓
Riley Johnson	NFIB		✓
Leon Stalcup	Mont Restaurant Assoc		X
KEITH OLSON	MT. Logging Assn	✓	
Ben Havdahl	MT Motor Carriers Assn	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

House Labor COMMITTEE

L NO. HB 2 DATE 3/21/90

NSOR

E (please print)	RESIDENCE	SUPPORT	OPPOSE
Denis Adam	DOR		
OHN LAHR	MPC-Butte		✓

YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

LABOR AND EMPLOYMENT RELATIONS COMMITTEE DNP #5(4)

DATE _____ BILL NO. _____ NUMBER _____

NAME	AYE	NAY
REP. COCCHIARELLA		✓
REP. COMPTON	✓	
REP. DRISCOLL		✓
REP. GLASER		✓
REP. KILPATRICK		✓
REP. LEE		✓
REP. O'KEEFE		✓
REP. PAVLOVICH	✓	
REP. RICE		✓
REP. SIMPKINS		✓
REP. SMITH	✓	
REP. SQUIRES		✓
REP. THOMAS	✓	
REP. WHALEN		✓
REP. McCORMICK, VICE-CHAIR		✓
REP. RUSSELL, CHAIR		✓
TALLY	4	12

Terri Doe
SECRETARY

CHAIRMAN

MOTION:

Whalen - reverse motion

ROLL CALL VOTE

ABOR AND EMPLOYMENT RELATIONS COMMITTEE State Insurance Commissioner

ATE 5/21 BILL NO. amend 7 NUMBER

AME	AYE	NAY
EP. COCCHIARELLA		X
EP. COMPTON	X	
EP. DRISCOLL		X
EP. GLASER	X	
EP. KILPATRICK		X
EP. LEE	X	
EP. O'KEEFE		X
EP. PAVLOVICH		X
EP. RICE		X
EP. SIMPKINS	X	
EP. SMITH		X
EP. SQUIRES		X
EP. THOMAS		X
EP. WHALEN	X	
EP. McCORMICK, VICE-CHAIR		X
EP. RUSSELL, CHAIR	X	
TALLY	6	10

Terri Doe
ECRETARY

CHAIRMAN

OTION:

let's reverse vote — unanimous

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - 2nd SPECIAL SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS COMMITTEE

Call to Order: By Chair Russell, on May 22, 1990, at 9:40 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Attorney, Legislative Council
John MacMaster, Attorney, Legislative Council
Terri Dore, Secretary

Announcements/Discussion: This meeting is a continuation of executive action on House Bill 2. The bill was heard and some executive action was taken on May 21, 1990.

DISPOSITION OF HOUSE BILL 2

The bill has already been moved **DO PASS** at this committee's meeting on May 21, 1990. Some amendments were added and more are being considered at this meeting.

Amendments, Discussion, and Votes: Chairman Russell stated that the committee did not take action on the State Insurance Commissioner's Amendment #4 of Exhibit 1.

Mr. MacMaster stated that Legislative Council staff and Susan Witte, representing the State Insurance Commissioner's office, discussed the use of "reserve" and have decided that it is the proper term to be used on page 10, line 13 of HB 2. The committee should decide whether or not to subject the state fund to one or more types of reserve requirements. This provision of the bill exempts the state fund from the insurance reserve requirements. Current state law provides (39-71-2311) that the state fund must have "adequate reserves". Another section of Title 39, Ch. 71, part 23, says that the state fund cannot declare dividends unless they have necessary reserves and reasonable surplus. Current law would have to be amended to change the reserve or surplus requirements.

Rep. Simpkins asked if the effect of changing reserve requirements would be that the state fund would not be required to put money in reserves to satisfy pending claims. Mr. MacMaster responded that current law in part 23 mandates the state fund to charge whatever premium is necessary in each year to cover the cost of the claim, the administrative cost of the claim and reserves for the claims that arise in that year.

Rep. Glaser asked if the capital reserve exemption is already in law. Mr. MacMaster replied that part 23 exempts the state fund is exempt from the requirement that a new company must have an initial reserve. Lines 13 and 14 of the bill exempt the state fund from other reserve requirements but other sections of law mandate adequate reserves.

Rep. Thomas asked if any claim reserves were involved in this section. Mr. MacMaster said claim reserves are involved. Ms. Witte said this section refers only to claim reserves. Rep. Thomas stated that it appeared that the state fund would be exempt from claim reserving practices and asked Ms. Witte to explain the purpose of this amendment. Ms. Witte said a mistake was made when asking that "reserve" be changed to "surplus" on line 13, page 8. After closer examination of the section, it is the Insurance Commissioner's recommendation that if the state fund is exempt from reserve requirements, a determination cannot be made of the financial condition of the fund. The fund will have assets but there will be no reserves to pay liabilities.

Rep. Driscoll stated that the bill as presently written on page 10, line 13 and 14, requires reserves for claims that have been reported and still owing, reserves for claims that have occurred but not yet been reported, and another type of reserve is required for underestimating the number of accidents in the year. If the state fund was exempt from these requirements, another unfunded liability would be created. Ms. Witte agreed.

Rep. Driscoll said that if the state fund is exempt from surplus requirements in law, it will not meet the criteria recommended by the NCCI. The bill prevents the Insurance Commissioner from closing the fund before July 1, 1992. After that time, Insurance Commissioner would be able to shut the fund down if the fund did not meet the NCCI criteria.

Randy Nordquist, actuary, Insurance Commissioners' Office, stated that the surplus recommended by the NCCI is only one of ten benchmark criteria used to identify companies that may have upcoming financial problems. If the company drops below that figure, the Commissioner may consider a rehabilitation program, but liquidation would not occur until surplus was negative.

Rep. Driscoll said that the bill, as written, does not require the state fund to have any surplus. Mr. Nordquist added that he understands the bill to exempt the state fund from reserve requirements, not surplus requirements. That means that the state fund would not have to establish loss liabilities, unearned premiums liabilities and statutory requirements under NCCI guidelines. The bill does not address surplus requirements.

Rep. Glaser remarked that staff has said that the surplus capital reserve requirement is already in law. He moved that page 10, line 13: "reserve requirements set forth in Title 33, chapter 2, part 5, and the" be deleted from the bill.

Rep. Simpkins asked Mr. MacMaster if the provision was removed from the bill, a conflict in law would be created with certain sections of Sen. Thayer's bill from the last legislative session. Mr. MacMaster did not think a conflict would be created nor did he think that it was needed.

Rep. Driscoll stated that he did not think reserve requirements referred only to cash flow but also to reserves for payment of unanticipated claims. By exempting the fund from such reserves, the system would not be changed and the problem of the unfunded liability would not be solved.

Rep. Thomas said that Rep. Glaser's motion was correct in removing the language from the bill. There is still provision in law that says the fund is subject to claim reserves.

Mr. Nordquist commented that a case reserve is created by the claims examiner but there is no reserve if the examiner errs in his assessment of the cost of the claim, unreported claims or reopened claims.

Rep. Glaser's motion **CARRIED** unanimously.

Rep. Driscoll asked Jim Murphy if the state fund could meet the reserve requirements set forth by this bill and present law. Mr. Murphy replied that the claims reserves requirement can probably be met but the surplus requirements cannot be met especially if the unfunded liability has to be paid.

Rep. Driscoll asked Mr. Nordquist if the state fund could meet the Insurance Commissioner's rules on reserves by July 1, 1992. Mr. Nordquist responded that he had not evaluated it enough yet to establish a firm conclusion. However, based on his evaluation to date, he did not think the fund could meet the requirements by that time.

Rep. Simpkins asked Mr. Nordquist if the unfunded liability was included in his evaluation. Mr. Nordquist replied that he was assuming that this bill would pass and the present unfunded liability would be separated from the state fund.

He is also assuming the fiscal note comment that if this bill passes the rate increase will be 7%.

Mr. MacMaster explained Rep. Driscoll's amendments (Exhibit 2). He suggested that the committee consider the first 31 amendments together, with the exception of #27.

According to Mr. MacMaster, there is an occupational disease law in addition to the workers' compensation law and it is administered in much the same manner. The first 31 amendments (except #27) refer to the occupational disease law. He suggested that the committee add a new section 17, entitled "Coordination with Occupational Disease Act of Montana" that would read: "For purposes of this act, and the administration of the Occupational Disease Act, a reference in this act to an injury or claim for injury resulting from an accident, includes a disablement as that word is defined in 39-72-102(d)".

Amendment #27 inserts a definition for "administer and pay". The amendment is placed in the wrong section. It should be at the beginning of the workers' compensation law. He suggested amending 39-71-116 (general definitions section for the entire workers' compensation act) by including Amendment #27 in that section. He also suggested rewording to remove redundancy.

Rep. Lee moved Rep. Driscoll's first thirty-one amendments with the exception of Amendment #27 and adding the new section 17 **DO PASS**. The motion **CARRIED** unanimously.

Mr. MacMaster suggested that Amendment #27 be changed to read: " "(1) "Administer and Pay" includes all actions by the state fund under the Workers' Compensation and Occupational Disease Acts necessary to the investigation, review, and settlement of claims, payment of benefits, setting reserves, furnishing of appropriate services and facilities, and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services." The amendment would be inserted in the general definition section of the workers' compensation law.

Rep. Lee moved that Amendment #27 changed according to Mr. MacMaster's suggestion **DO PASS**. The motion **CARRIED** unanimously.

Mr. McMaster explained the effect of Rep. Driscoll's second set of Amendments 1 through 10.

Rep. Squires asked if this committee passed amendments dealing with the Legislative Auditor and MAPA at the May 21, 1990, meeting of this committee. Rep. Driscoll replied that the committee considered an amendment to exempt the state fund from MAPA requirements and the effort failed. Rep. Squires then asked if some of these amendments (Exhibit 2) would

have the same effect. Rep. Driscoll responded that some of them would have that effect. The effect of Amendments 6-10 would be to remove the state fund from MAPA.

p. Driscoll moved Amendments 1 through 10 **DO PASS.**

p. Thomas asked if the effects of MAPA on the state fund could be explained. With no objection from the committee, Rick Bach, counsel for State Compensation Mutual Insurance Fund, testified that the fund has had difficulty with the promulgation of rules if it is expected to act as a mutual insurance company as intended of 1989. The state fund has taken the position, after considering the statutes, that it cannot effectively promulgate rules. He asked to distribute copies of a recent court decision. Rep. Glaser objected. Mr. Bach did not distribute his material.

p. Driscoll withdrew his **DO PASS** motion for Amendments 1-10.

p. Glaser moved Amendment #1, 2, and 5 **DO PASS** with Mr. MacMaster's suggested language change on #5 (after "from", insert "claims for injuries resulting from accidents that occur before July 1, 1990".

). Driscoll asked if the amendments passed earlier would include industrial disease in this portion also. Mr. MacMaster responded affirmatively.

e motion **CARRIED** unanimously.

). Whalen suggested that some changes be made that would remove the state fund from MAPA, make it clear that it is not a state agency and still give the legislature oversight over its activities.

). Whalen asked Rep. Glaser if he would agree to exempting the state fund from MAPA when setting rates. Rep. Glaser replied that MAPA allows public input into the process. He wants the state fund subjected to MAPA when determining the process to set rates but not on rates themselves. If the state fund is not a state agency, then it would not be necessary for the Legislature to meet to solve the problem.

). Driscoll asked Rep. Whalen if page 8, new section 6 gives the Legislative Auditor enough authority to perform the audits required, or would Amendment #6 still be necessary? Rep. Whalen asked for staff's opinion. Mr. MacMaster stated that the Legislative Auditor will still perform the audits. In addition, Title 5, Chapter 13 would still be in effect and requires that the Legislative Auditor shall audit every state agency. The Legislature cannot create an entity that is so far removed from state government that it is not a state agency. Whatever the Legislature creates will be a state agency and a private corporation cannot be created.

Rep. Whalen asked Mr. MacMaster if it was his position that if an amendment were offered that deleted reference to MAPA with the exception for the purpose of making changes in the rate setting process, that the elimination of the paragraph on page 11, would not handicap the Legislative Auditor's function. Mr. MacMaster agreed.

Rep. Whalen moved that Amendments #6, 7, 8 and 10 DO PASS. The effect would be that MAPA is still required for the purpose of setting rates.

Rep. Lee asked Mr. MacMaster if Title 2, Chapters 2, 4, and 6 and Title 5, Chapter 13 dealt with other issues besides MAPA. If the applicability of MAPA was removed, what would be excluded? Mr. MacMaster stated that there are five chapters: MAPA, Legislative Audit Act, state government employee conduct, public records, and that the public has a right to participate in state government.

Rep. Simpkins asked Mr. MacMaster if "rulemaking" was changed to "by-laws", would the state fund be able to adopt procedures to use under by-laws. Mr. MacMaster stated that, in his opinion, and that of Greg Petesch, the state fund is a state agency, and any rules or by-laws adopted will become administrative law in Montana. It is unconstitutional to impose such laws on the public without allowing the public certain minimal due process rights.

Rep. Simpkins stated that the issue is whether the Legislature is to have any authority to counteract anything this fund does without going to court. Under MAPA, there is an administrative review by the Code Committee.

Rep. Glaser remarked that the issue is basic. The workers' compensation unfunded liability puts a cost per person on every person in Montana of $400 and interest of $400. If Rep. Whalen's motion prevails, the public will be asked to give $800 per person without any chance of input.

Rep. Thomas said that the issue is not Legislative input. There are numerous other places in the bill where there is legislative oversight. The question is whether there should be more restrictions on the state fund conducting its business.

Rep. Lee understood that there is also an issue that the state fund has made rules without going through the MAPA process. Mr. MacMaster agreed.

Rep. Simpkins commented that a similar provision should be put into laws governing the Board of Public Education. It would settle the issue that the Board is a state agency and must comply with state laws.

p. Whalen asked Mr. MacMaster to explain why staff always tries to insure that the rulemaking provision is included in all proposed legislation. It seems that it is a grant from the Legislature and does not have to be given. Mr. MacMaster replied that without that authority, rules cannot be adopted. All rules would have to be written into statute.

p. Driscoll asked Rep. Whalen if the effect of his motion would be that the state fund would not be a state agency but would have to comply with MAPA. Rep. Whalen responded that the state fund would only have to comply with MAPA when making rate changes. It would have the attributes of a state agency but is not.

ll call vote was taken. The motion **FAILED** on a tie vote.

p. Thomas distributed suggested amendments (Exhibit 3). The concept of the first new section would be a window of opportunity that would allow an offer of a lump sum settlement. It does not require that it be accepted and is intended to accelerate the settlement of the claims.

The second new section would allow the state fund to privately contract the settlement of some of the old claims.

p. Thomas moved his amendments **DO PASS.**

p. Pavlovich suggested that someone could get rich from the new section 19. Rep. Thomas replied that the contracting firm would not be able to take a part of the settlement. Rep. Driscoll added that the new section 19 states that the state fund shall look for private claims examiners, determine the costs and return to the next Legislature for approval. It cannot change unless the Legislature specifically approves the plan. The section will only allow the state fund to obtain proposals before the next legislative session.

p. Driscoll remarked that present law states that lump sum settlements are not in the best interests of the worker. He did not think the state fund had a moral obligation to protect the worker from himself. If the worker wants the money and will sign a release with a good faith offer, then the worker should be able to receive a lump sum settlement. The offer must be at least 80% of what the claim is determined to be worth. The provision only enables the state fund to make an offer to the injured worker.

p. Whalen commented that there may be complications with offering lump sum settlements to retroactive cases. Rep. Simpkins stated that the offer would be an out of court settlement and voluntary. Rep. Whalen replied that the state fund would also have to approve the settlement according to certain criteria. Rep. Simpkins stated that retroactivity is not the issue because it is an ongoing case.

Rep. Driscoll stated that lump sum settlements are legal on accidents prior to 1987 but they must show how much the claim is worth. This amendment allows the state fund to make an offer.

Rep. Whalen asked Rep. Thomas if he would object to inserting "in good faith prior to offer". The sentence would now read: "The state fund shall in good faith prior to offer, offer.." Rep. Thomas pointed out that further into the section, it is specified that the offer shall be at least 80% of the liability assumed by the state fund. He asked that the vote be taken on the amendment as it is.

Rep. Rice asked Mr. MacMaster if lump sum settlements should be specifically exempt from justification as required by present statues. Mr. MacMaster replied that that is the intent of the new section 18. It could be amended to make it clearer that this section applies to all claims prior to July 1.

Rep. Thomas agreed to add Mr. MacMaster's suggestion to his amendment with Mr. MacMaster inserting the appropriate language.

The motion **CARRIED** unanimously.

Rep. Cocchiarella distributed an amendment (Exhibit 4) and moved that the amendment **DO PASS**. She asked that an effective date of July 1, 1991, be added to the amendment.

This amendment provides a general fund appropriation to help pay the payroll tax being imposed on school districts and local governments by the passage of this bill. The schools and local governments are still subject to I-105. If this amendment is passed, an appropriation to pay for it can be made in the next legislative session.

Rep. Whalen stated that school districts were exempt from I-105 in the last special session. Rep. Cocchiarella remarked that school spending has been capped and they are still limited on the amount of money that can be generated. Rep. Driscoll pointed out that the schools and local governments are now paying a .3% tax that will decrease to .28% on July 1. Therefore, the money is already in the budgets.

Roll call vote was taken. The motion **FAILED** 7 to 9.

Rep. Driscoll introduced Exhibit 5 which is an amendment suggested by Rep. Cobb. The amendment would not allow the state fund to use the same actuary for more than 3 successive years.

Rep. Glaser stated that this particular provision was in the bill when it was originally drafted but it was removed.

ep. Simpkins said that he was in favor of this motion because of recent events concerning the WANG computer maintenance contract at the state fund and the state fund deciding they would like sole contracting even though WANG wanted $44,000 per year more than others to maintain their computer. This provision would prevent the bonding to one actuary.

ep. Smith commented that the best work is not always the cheapest. There may be circumstances where it would be better to keep the actuary for another year.

oll call vote was taken. The motion **FAILED** 6 to 9.

ep. Lee introduced two sets of amendments (Exhibit 6 and 7) requested by Rep. Boharski.

ep. Lee asked that Rep. Boharski be allowed to explain the amendments. Rep. Boharski asked that the committee consider Exhibit 6 which clarifies that the state fund use a rating organization and set rates in a manner to protect the state fund. This amendment provides that any private carrier in the state can belong to only one rating organization, set their rates and receive approval from the Insurance Commissioner. State fund rates do not conform to recommended rates from rating organization. There is a suspicion that schedule rating is being used.

Exhibit 7 is an amendment that attempts to keep private carriers in check. There is a section of statute that prevents rates for one occupation from being changed by a different percentage than other occupations.

ep. Lee moved Exhibit 6 **DO PASS.**

ep. Driscoll stated that it appears that this amendment will tell the state fund exactly how to set their rates. He did not understand how the state fund could comply with MAPA and with this amendment.

ne motion **FAILED** on a voice vote.

ep. Lee moved **DO PASS** on Exhibit 7.

ep. Smith requested that Mr. Nordquist be allowed to explain how rates are set. Mr. Nordquist explained that on the average nationally, for every $100 collected in premiums, $65 is losses and $35 is expenses. The state fund's proposed rates would bring in only $65 or the amount for losses. There is no provision for expenses and some of the $65 is expected to be used to retire the unfunded liability. The rate level is presently at $52.25 in loss premium whereas the NCCI or a private carrier would collect $100 in premium. Even with the predicted 7% increase the loss component would still be less than the national average of $65. Rep. Boharski's amendment deals with rate level equity and the amendment

would allow for a bigger data base than simply the Montana data base when setting rates. NCCI is a national rating organization that gathers statistics, analyzes them and creates a schedule of rates. They also use other factors to determine experience ratings for occupations as well as for individuals employers.

Rep. Rice asked Mr. Nordquist if rates would have to be raised 100% if this bill passes. Mr. Nordquist responded negatively and added that the state fund's rates would not have to go up to the full $100. According to his preliminary analysis, the state fund's expense component is lower than private carriers.

Rep. Driscoll asked Mr. Nordquist if Montana was a "file and use" state. Mr. Nordquist responded that when it is identified that a carrier is doing something inappropriately, the Insurance Commissioner still has the authority to mandate that they stop doing it. The statute requires that the rate be filed with supporting data. The filing can be rejected if the data is not supportive.

Rep. Thomas expressed concern that "must be a percentage" was too restrictive and would not allow for discounting, modifications, retro-plans, etc. Mr. Nordquist responded that the amendment would still allow for discounting, etc. because of the difference between the rate and the premium. The rate is the amount that applies per unit of exposure (per $100 of payroll). The rate is what is being considered in that amendment. The amount of payroll for each class multiplied by the individual rate for each occupational class to arrive at the manual premium. The rating plans would now apply to the premium. The rate has already been applied before any of the rating plans come into play.

Rep. Lee asked Mr. Nordquist if the amendment was workable since it requires that the percentage for each classification would be the same. Mr. Nordquist replied affirmatively.

Roll call vote was taken. The motion **FAILED** 5 to 10.

Recommendation and Vote: Rep. Driscoll moved that HB 2 **DO PASS AS AMENDED.**

Rep. Whalen asked for further clarification of the amendment dealing with lump sum settlements. Rep. Thomas said that this amendment applies to those with claims that are not allowed to receive lump sum settlements under current law. It does not affect claims that are presently allowed lump sum settlements. Rep. Rice added that presently the claimant must prove his need for a lump sum and justify it. Those claimants would not have to go through that process.

The motion **CARRIED** with three members opposing.

ADJOURNMENT

djournment At: 12:50 p.m.

Angela Russell, by JA
REP. ANGELA RUSSELL, Chairman

R/td

90522A90.min

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 5/22/90

NAME	PRESENT	ABSENT	EXCUSED
REP. COCCHIARELLA	✓		
REP. COMPTON	✓		
REP. DRISCOLL	✓		
REP. GLASER	✓		
REP. KILPATRICK	✓		
REP. LEE	✓		
REP. O'KEEFE	✓		
REP. PAVLOVICH	✓		
REP. RICE	✓		
REP. SIMPKINS	✓		
REP. SMITH	✓		
REP. SQUIRES	✓		
REP. THOMAS	✓		
REP. WHALEN	✓		
REP. McCORMICK, VICE-CHAIR	✓		
REP. RUSSELL, CHAIR	✓		

Jeri

STANDING COMMITTEE REPORT

May 22, 1990

Mr. Speaker: We, the committee on Labor report that HB0002 (first reading copy -- white) do pass as amended.

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, line 17.
Following: line 16
Insert: "PROVIDING THAT THE COMMISSIONER OF INSURANCE SHALL OVERSEE THE STATE FUND AND EXAMINE IT BIENNIALLY;"

2. Title, line 21.
Following: "2020;"
Insert: "PROVIDING A SPECIAL METHOD OF OFFERING LUMP-SUM SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990; REQUIRING THE STATE FUND TO REQUEST PROPOSALS FOR THE SETTLEMENT OF CLAIMS ARISING PRIOR TO JULY 1, 1990, BY PRIVATE CLAIMS ADJUSTERS;"

3. Title, line 22.
Following: "SECTIONS"
Insert: "39-71-116,"

4. Page 2, line 18.
Following: "cost-effective"
Strike: ", most"
Insert: "and"
Following: "most efficient"
Strike: ", and surest"

5. Page 3, line 25.
Following: "1990."
Strike: "Premiums"
Insert: "Except as provided in 39-71-2316(9), premiums"

6. Page 4, line 24.
Strike: "each"
Insert: "the total"

HB0002.1

AT

7. Page 8, line 23.
Following: "5-13-305."
Insert: "In addition, the commissioner of insurance shall biennially conduct or have conducted a financial examination of the state fund pursuant to 33-1-401."

8. Page 9, line 4.
Following: line 3
Insert: "Section 7. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, the settlement of claims, payment of benefits, setting reserves, furnishing services and facilities, and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

~~(1)~~ (2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(2)~~ (3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections ~~(2)(a)~~ (3)(a) through ~~(2)(d)~~ (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections ~~(2)(a)~~ (3)(a) through ~~(2)(e)~~ (3)(e) of this section, exists).

~~(3)~~ (4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

~~(4)~~(5) "Child" includes a posthumous child, a dependent tepchild, and a child legally adopted prior to the injury.

~~(5)~~(6) "Days" means calendar days, unless otherwise pecified.

~~(6)~~(7) "Department" means the department of labor and ndustry.

~~(7)~~(8) "Fiscal year" means the period of time between July and the succeeding June 30.

~~(8)~~(9) "Insurer" means an employer bound by compensation lan No. 1, an insurance company transacting business under ompensation plan No. 2, the state fund under compensation plan o. 3, or the uninsured employers' fund provided for in part 5 of his chapter.

~~(9)~~(10) "Invalid" means one who is physically or mentally ncapacitated.

~~(10)~~(11) "Maximum healing" means the status reached when a orker is as far restored medically as the permanent character of he work-related injury will permit.

~~(11)~~(12) "Order" means any decision, rule, direction, equirement, or standard of the department or any other etermination arrived at or decision made by the department.

~~(12)~~(13) "Payroll", "annual payroll", or "annual payroll for he preceding year" means the average annual payroll of the mployer for the preceding calendar year or, if the employer hall not have operated a sufficient or any length of time during uch calendar year, 12 times the average monthly payroll for the urrent year. However, an estimate may be made by the department or any employer starting in business if no average payrolls are vailable. This estimate is to be adjusted by additional payment y the employer or refund by the department, as the case may ctually be, on December 31 of such current year. An employer's ayroll must be computed by calculating all wages, as defined in 9-71-123, that are paid by an employer.

~~(13)~~(14) "Permanent partial disability" means a condition, fter a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a esult of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool ursuant to one of the options set forth in 39-71-1012 but uffers impairment or partial wage loss, or both.

~~(14)~~(15) "Permanent total disability" means a condition esulting from injury as defined in this chapter, after a worker eaches maximum healing, in which a worker is unable to return to ork in the worker's job pool after exhausting all options set orth in 39-71-1012.

~~(15)~~(16) The term "physician" includes "surgeon" and in ither case means one authorized by law to practice his rofession in this state.

~~(16)~~ (17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

~~(17)~~ (18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(18)~~ (19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(19)~~ (20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

~~(20)~~ (21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(21)~~ (22) "Year", unless otherwise specified, means calendar year."

Renumber: subsequent sections

9. Page 10, lines 13 and 14.
Following: ", the"
Strike: the remainder of line 13 through "and the" on line 14

10. Page 10, line 20.
Following: line 19
Insert: "(2) On or before September 1 of each year, the state fund shall file with the commissioner of insurance a complete statement of its financial condition, transactions, and affairs as of the preceding June 30. The statement must be in the general form and context required by 33-2-701. The executive director shall verify the statement under oath. The commissioner of insurance may, in his discretion, waive any such verification under oath.

(3) The commissioner of insurance may refuse to accept the fee for continuance of the state fund's certificate of authority, as provided in 33-2-117, or may in his discretion suspend or revoke the certificate of authority of the state fund if it fails to file its annual statement when due.

1:Exc02.1 (CT)

(4) If the commissioner of insurance finds that the executive director, a director, or an employee of the state fund subscribed to, made, or concurred in making or publishing any annual statement or any other statement required by law knowing the same to contain any material statement that was false, the commissioner of insurance shall impose a civil penalty of not more than $1,000.

(5) At the time of filing, the state fund shall pay the filing fee for the annual statement to the commissioner of insurance as prescribed in 33-2-708.

(6) The commissioner of insurance may impose a civil penalty not to exceed $100 a day for each day after September 1 that the state fund fails to file the annual statement required by subsection (2). The civil penalty may not exceed a maximum of $1,000."

Renumber: subsequent subsections

1. Page 10, line 23.
Strike: "existed on"
Insert: "arises from claims for injuries resulting from accidents that occurred before"

2. Page 17, lines 13 and 14.
Strike: "-- penalty"

3. Page 17, line 17.
Following: "39-71-401"
Insert: ", except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% of the employer's payroll in the preceding week"

4. Page 18, lines 9 through 15.
Strike: subsections (1)(b) and (1)(c) in their entirety
Renumber: subsequent sections

5. Page 18, lines 20 through 22.
Strike: subsection (1)(e) in its entirety

HB0002.1

16. Page 19, line 2.
Following: line 1
Insert: "(3)(a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry, including the workers' compensation division, and the state fund shall, on [the effective date of this act] or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry, including the workers' compensation division, and the state fund, shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section."

Renumber: subsequent subsections

7. Page 19, lines 2 and 3.
trike: "Sections" through "15-35-122" on line 3
nsert: "The provisions of Title 15, chapter 30, not in conflict with the provisions of this part"

8. Page 19, line 3.
ollowing: "regarding"
nsert: "administration, remedies, enforcement, collections, hearings, interest,"

9. Page 20, line 10.
ollowing: line 9
nsert: "NEW SECTION. Section 18. Coordination with Occupational Disease Act of Montana. For purposes of [this act] and the administration of Title 39, chapter 72, a reference in [this act] to an injury resulting from an accident or to a claim for an injury resulting from an accident includes a disablement as defined in 39-72-102(4).

NEW SECTION. Section 19. Transfer of accounts receivable. The department of revenue is not responsible for the collection of an account receivable it takes over from the department of labor and industry on [the effective date of this section] if the account is more than 720 days past due or is an account of an employer that is no longer in business. Such accounts must be transferred to the attorney general for collection.

NEW SECTION. Section 20. Settlement of fixed benefit claims that arose prior to July 1, 1990. (1) The state fund shall offer a lump-sum settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability and has fixed benefits. The lump-sum settlement must be 80% of the amount of liability accepted by the state fund, discounted to present value. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability in exchange for accepting the lump-sum settlement. The claimant shall accept a lump-sum settlement in writing before November 1, 1990, or the settlement offer is void.

(2) If the lump-sum settlement offer made pursuant to subsection (1) is not accepted, the lump-sum law in effect on the date of the injury applies.

NEW SECTION. Section 21. Request for proposals for claims settlement. The state fund shall prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim that arose before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal."

Renumber: subsequent sections

20. Page 21, line 11.
Strike: "14 and 16"
Insert: "13, 15, 17, 18, and 20"
Strike: "23"
Insert: "28"

21. Page 21, line 13.
Strike: "[Section 15] is"
Insert: "The change in the tax rate in 39-71-2503(1)(a) and the amendment inserted at the end of the first sentence of 39-71-2503(1)(a) by [section 16] are"

22. Page 21, line 14.
Strike: "applies"
Insert: "apply"

1160002.1

Page 21, line 15.
llowing: line 14.
sert: "(3) [Sections 14 and 19] and all other amendments to
39-71-2503 contained in [section 16] are effective July 1,
1991."

Page 21, line 16.
rike: "11"
sert: "12"
rike: "13"
sert: "14"
rike: "16"
sert: "17"

1188002.1(RT
021858SC.HRT

EXHIBIT 1
DATE 5/22/90
HB 2

Amendments to House Bill No. 2
Introduced Bill Copy
Prepared by the Commissioner of Insurance
May 21, 1990

1. Page 3, line 25.
Following: "[section 3]"
Insert: "and 39-71-2316(9)"

2. Page 8, line 17.
Following: "a"
Strike: "financial and"

3. Page 8, line 23.
Following: "."
Insert: "In addition, the commissioner of insurance shall biennially conduct or have conducted a financial examination of the state fund, pursuant to 33-1-401."

4. Page 10, line 13.
Strike: "reserve"
Insert: "surplus"

5. Page 10, line 19.
Following: "(2)"
Insert: "The state fund shall annually on or before September 1 file with the commissioner of insurance a full and true statement of its financial condition, transactions, and affairs as of the June 30 preceding. The statement shall be in such general form and context as is required or not disapproved by the commissioner of insurance, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner of insurance. The statement shall be verified by the oath of state fund's president or vice-president and secretary. The commissioner of insurance may, in his discretion, waive any such verification under oath.

(3) The commissioner of insurance may refuse to accept the fee for continuance of the state fund's certificate of authority, as provided in 33-2-117, or may in his discretion suspend or revoke the certificate of authority of the state fund if it fails to file its annual statement when due.

(4) Any director, officer, or employee of the state fund who subscribes to, makes, or concurs in making or publishing any annual statement or any other statement required by law knowing the same to contain any material statement which is false shall be punished by a fine of not more then $1,000.

(5) At time of filing, the state fund shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.

(6) The commissioner of insurance may impose a fine not to exceed $100 a day for each day after September 1 that the state fund fails to file the annual statement referred to in subsection (1). Such fine may not exceed a maximum of $1,000."

Renumber: subsequent subsections.

Exhibit # 1
5/22/90 am HB

6. Page 13, line 1.
Following: "."
Strike: "Classifications and premium rates may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4."

7. Page 13, line 8.
Following: "."
Insert: "The commissioner of insurance shall have the authority to enforce the provisions of this subsection."

EXHIBIT 2
DATE 3/22/90
HB 2

AMENDMENTS TO HOUSE BILL 2
Introduced by Jerry Driscoll
By Request of

1. Title, lines 7 through 9.
Following "FROM"
Strike: "CLAIMS" on lines 7 through "DATE";" on line 9.
Insert: "PRE-JULY 1, 1990 CLAIMS OR POST-JULY 1, 1990 CLAIMS".

2. Statement of Intent, page 2, line 6.
Following: "of"
Strike: "claims before and on or after that date."
Insert: "pre-July 1, 1990 claims and post-July 1, 1990 claims."

3. Statement of Intent, page 2, lines 23 through 25.
Following: "claim" on line 23
Strike: remainder of lines 23 through 25 in their entirety
Insert: "is a pre-July 1, 1990 or post-July 1, 1990 claim."

4. Statement of Intent, page 3, lines 4 through 6.
Following: "pay" on line 4
Strike: remainder of line 4 through "1990;" on line 6
Insert: "pre-July 1, 1990 claims;"

5. Statement of Intent, page 3, lines 10 and 11.
Following: "costs" on line 10
Strike: Remainder of lines 10 and 11 in their entirety
Insert: "to administer and pay pre-July 1, 1990 claims."

6. Page 3, lines 19 through 21.
Following: "sources for" on line 19
Strike: remainder of lines 19 through "1990." on line 21
Insert: "pre-July 1, 1990 claims and post-July 1, 1990 claims."

7. Page 3, lines 23 through 25.
Following: "pay" on line 23
Strike: remainder of lines 23 through "1990." on line 25
Insert: "pre-July 1, 1990 claims."

8. Page 4, line 2 and 3.
Strike: "claims" on line 2 through "1990." on line 3
Insert: "post-July 1, 1990 claims."

9. Page 4, lines 6 through 9.
Following: line 5
Strike: lines 6 though 9 in their entirety
Insert: "pre-July 1, 1990 claims, and separately determine the cost to administer and pay post-July 1, 1990 claims."

10. Page 4, lines 13 through 16.
Following: "for" on line 13
Strike: remainder of line 13 through "1990," on line 16
Insert: "pre and post-July 1, 1990 claims,"

11. Page 4, lines 18 and 19.
Strike: "claims" on line 18 through "1990." on line 19
Insert: "post-July 1, 1990 claims"

12. Page 4, lines 22 through 24.
Following: "pay" on line 22
Strike: remainder of lines 22 through "1990." on line 24
Insert: "post-July 1, 1990 claims."

13. Page 5, lines 5 and 6.
Strike: "claims" on page 5 through the end of line 6 in its entirety
Insert: "pre-July 1, 1990 claims."

14. Page 5, lines 9 and 10.
Following: "pay" on line 9
Strike: remainder of lines 9 and 10 in their entirety
Insert: "pre-July 1, 1990 claims,"

15. Page 5, lines 15 though 17.
Strike: "claims" on line 15 through "1990." on line 17
Insert: "pre-July 1, 1990 claims."

16. Page 5, line 25 through page 6, line 1.
Following: "pay" on line 25
Strike: the remainder of line 25 through "1990." on page 6, line 1
Insert: "pre-July 1, 1990 claims."

17. Page 6, lines 6 and 7.
Strike: "claims" on line 6 through "1990." on line 7
Insert: "pre-July 1, 1990 claims."

18. Page 8, lines 11 and 12.
Strike: "claims" on line 11 through "1990," on line 12
Insert: "pre-July 1, 1990 claims,"

19. Page 8, lines 12 and 13.
Following: "only" on line 12
Strike: remainder of line 12 through "of" on line 13
Insert: "to administer and pay"

20. Page 8, lines 18 through 20.
Strike: "claims" on line 18 through "1990." on line 20
Insert: "pre-July 1, 1990 claims."

21. Page 8, line 25 through page 9, line 3.
Following: "between"
Strike: remainder of line 25 through page 9, line 3 in their entirety
Insert: "pre-July 1, 1990 claims and post-July 1, 1990 claims."

22. Page 11, lines 1 through 3.
Following: "[Section 3],"
Strike: the remainder of lines 1 through 3 in their entirety
Insert: "the operations of the State Fund based on insolvency due to post-July 1, 1990 claims."

23. Page 13, lines 18 and 19.
Strike: "claims" on line 18 through "1990," on line 19
Insert: "pre-July 1, 1990 claims,"

24. Page 14, lines 8 through 11.
Following: "to" on line 8
Strike: the remainder of lines 8 through 11 in their entirety
Insert: "pre-July 1, 1990 or post-July 1, 1990 claims."

25. Page 14, lines 14 and 15.
Strike: "claims" on line 14 through "1990." on line 15
Insert: "pre-July 1, 1990 claims."

26. Page 14, lines 21 through 23.
Strike: "claims" on line 21 through "1990," on line 23
Insert: "post-July 1, 1990 claims,"

27. Page 15, line 15.
Insert: "(1) "Administer and pay" ~~means~~ includes all actions ~~necessary~~ necessary to by the ~~State Fund to investigate, review and pay medical, wage loss and other benefits to persons filing claims, under~~ the Workers' Compensation and Occupational Disease Acts. ~~Such actions include but~~ are ~~not limited to the investigation~~, review, and settlement of claims, payment of benefits, setting reserves, furnishing of appropriate services and facilities, and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services ~~as appropriate~~."
Renumber: subsequent sections through line 21.

28. Page 15, line 22.
Insert: "(5) "Post-July 1, 1990 claims" means those claims for benefits under the Workers' Compensation Act for injuries resulting from accidents that occur on or after July 1, 1990, or claims for benefits under the Occupational Disease Act for diseases resulting from occupational exposure that last occurred on or after July 1, 1990.

(6) "Pre-July 1, 1990 claims" means those claims for benefits under the Workers' Compensation Act for injuries resulting from accidents that occur before July 1, 1990, or claims for benefits under the Occupational Disease Act from diseases resulting from occupational exposure that last occurred before July 1, 1990."

Renumber: subsequent sections.

29. Page 16, lines 7 through 9.
Strike: "claims" on line 7 through "1990," on line 9
Insert: "pre-July 1, 1990 claims,"

30. Page 17, lines 19 and 20.
Strike: "claims" on line 19 through "1990." on line 20
Insert: "pre-July 1, 1990 claims."

31. Page 20, lines 5 and 6.
Strike: "claims" on line 5 through "1990." on line 6
Insert: "pre-July 1, 1990 claims."

Exhibit # 2
5/22/90 am HB 2

AMENDMENTS TO HOUSE BILL 2
Introduced by Jerry Driscoll
By Request of _____

1. Statement of Intent, page 2, line 18.
Following: "cost-effective"
Strike: ", most"
Insert: "and"

Following: "most efficient"
Strike: ", and surest"

2. Page 4, line 24.
Strike: "each"
Insert: "the total"

3. Page 9, line 14.
Strike: "at least annually"

4. Page 9, line 17 through page 10, line 4.
Following: "reserves"
Strike: ", during" on line 17 through "part" on page 10, line 4

5. Page 10, line 23.
Strike: "existed on July 1, 1990."
Insert: "arises from pre-July 1, 1990 claims."
~claims for injuries resulting from accidents that occur before 7/1/

6. Page 11, lines 9 through 15.
Strike: subsection(4) in its entirety

7. Page 12, line 8.
Strike: "rule making"
Insert: "by-laws"

8. Page 12, line 18.
Strike: "rules"
Insert: "by-laws"

9. Page 13, lines 1 through 4.
Strike: "Classifications" on line 1 through "4." on line 4

10. Page 15, line 2.
Strike: "rules"
Insert: "by-laws"

Exhibit # 2
5/22/90 am HB 2

From Pat Sweeny

1. The first set of amendments clarifies the language in the bill without changing its substantive character.

The title of the bill has been amended initially at line 7 of page 1 to reflect the terms "pre-July 1, 1990 claims" and "post-July 1, 1990 claims". Both terms are then defined under Section 13, Definitions, to encompass both occupational disease as well as workers' compensation claims for which the State Fund is liable under its policies. In the present format of the introduced bill, "claims" are limited only to "claims for injuries from accidents", excluding from consideration occupational disease claims. The amended language is meant to not only clarify and include occupational disease benefits, but also to reduce surplus words in the body of the bill by use of the Definition section, Section 13. In the Definition section, there is also an additional term, "administer and pay" which is defined to encompass all functions of the State Fund pertaining to its daily operations.

2. The second set of amendments, except for the first two, do change the substantive character of the introduced bill.

a. The first two amendments further clean up the language in the bill. The first will result in the language which reads "the most cost-effective and efficient", striking "surest", since there are never guarantees as to the efficacy of the fill. The second amendment also cleans up the language pertaining to a loan or loans for initial operating expenses, substituting "a total" for "each" amount borrowed during the fiscal year beginning July 1, 1990.

b. The second amendment strikes the language "at least annually" from page 9, line 14, since it potentially conflicts with the insurance code pertaining to promulgation of rates by an insurance company, and it effectively ties the hand of the State Fund from biennially setting rates for state agencies which has previously been suggested for the benefit of the State of Montana. The language in our introduced bill as it is presently worded, appears to require the State Fund to

adjust premiums more often than once a year, and would arguably allow insureds by statutory authority to question the operation of the State Fund if premiums are not adjusted more than once a year. This language should therefore be stricken.

c. The fourth amendment on the page strikes the new language as contained in the introduced bill at page 9, line 17 through page 10, line 4. Again, this language arguably intrudes upon Sec. 33-16-201, MCA of the insurance code, which requires that rates be neither excessive nor inadequate.

d. The fifth amendment listed applies to the Insurance Commission's authority to declare the State Fund insolvent for a deficiency in assets as it existed on July 1, 1990. In order to maintain clarity and integrity on the issue of separation of pre- and post-July 1, 1990 claims, this language was inserted.

e. Amendment six strikes Subsection 4 at page 11, lines 9-15 in its entirety, which would specifically apply the Montana Administrative Procedures Act for all procedural and substantive operations of the State Fund.

In order for the State Fund to operate as a domestic mutual insurer, it is senseless to require promulgation of rules which necessitate publication of proposed rules, opted for public comment, the possibility of public hearings required because of the large volume of interested persons and the requirements that the State Fund hold contested case hearing pertinent to its own rules.

With oversight of the Montana Insurance Commissioner's Office as with any other insurer in the state, and the concomitant requirement of compliance with the Montana Insurance Code with opportunity under those statutes for administrative hearings, the application of the Administrative Procedures Act specifically to the State Fund as a mutual insurer is not only duplicative in most instances, but unduly burdensome. A brief explanation of the burden placed on the State Fund if it were answerable to the Montana Administrative Procedures Act, is that every time it is required to change rates, whether to increase them or decrease them, it must provide notice to its 27,000 policyholders of such a rate change, with an opportunity for public comment. Obviously because of the number of interested persons who would be concerned about any rate increase, the ability of the State Fund to implement needed rate changes in a timely fashion would effectively grind to a standstill.

Since the State Fund is expected to operate as a mutual insurance company under the Montana Insurance Code, the State Fund ought to be given a chance to succeed without the unnecessary and unduly burdensome additional procedures under MAPA, which would surely tie its hands from operating like an efficient private insurer.

f. Amendment 6, page 12, line 8, inserts "bylaws" for "rulemaking", tying back to the idea that the State Fund should be run as a mutual insurance company under the auspices of the State Insurance Commissioner's Office.

The previous section, Section 9 citing Section 39-71-2315, MCA, already gives the State Fund's Board of Directors authority to exercise any power and authority "as fully and completely as the governing body of a private mutual insurance carrier." Amendment to Section 10 simply clarifies the duties of the Board, to encompass promulgation of by-laws rather than rule making, which would again saddle it with the requirements of the Montana Administrative Procedures Act.

g. Similarly, at page 12, line 18 of the introduced bill, the term "bylaws" is substituted for "rules".

h. On page 13, lines 1-4, the underlined passage is deleted since this would tie in again the Montana Administrative Procedures Act. Since the State Fund must comply with the insurance code already, as well as those rules of the Insurance Commissioner's Office pertaining to rates and classifications, this passage would be duplicative, would be a constraint upon the insurance code and the Insurance Commissioner Office's authority, and is certainly unnecessary.

i. Finally, the amendment on page 15, line 2, once again inserts the term "bylaws" for "rules".

RB/df/1897

EXHIBIT 3
DATE 5/22/90
HB 2

Amendments to House Bill No. 2
Second Reading Copy

For the Committee of the whole

Prepared by Greg Petesch
May 21, 1990

1. Title, line 21.
Following: "2020;"
Insert: "REQUIRING THE STATE FUND TO OFFER PERSONS WHOSE BENEFITS HAVE BEEN DETERMINED UNDER A CLAIM BASED UPON AN ACCIDENT OCCURRING BEFORE JULY 1, 1990, A DISCOUNTED LUMP-SUM SETTLEMENT IN EXCHANGE FOR A RELEASE OF FUTURE LIABILITY; REQUIRING THE STATE FUND TO SOLICIT PROPOSALS FOR CONTRACTING WITH PRIVATE CLAIMS ADJUSTERS FOR SETTLING THE CLAIMS OF PERSONS WHOSE BENEFITS HAVE NOT BEEN DETERMINED UNDER A CLAIM BASED UPON AN ACCIDENT OCCURRING BEFORE JULY 1, 1990;"

2. Page 20, line 15.
Following: section 17
Insert: " NEW SECTION. Section 18. Settlement of fixed benefit claims for injuries resulting from accidents occuring prior to July 1, 1990. The state fund shall offer a lump-sum settlement to each person who has a claim for which the state fund has accepted liability and fixed benefits for an injury resulting from an accident that occurred before July 1, 1990. The lump-sum settlement must be 80% of the amount of liability accepted by the state fund, discounted to present value. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability in exchange for accepting the lump-sum settlement. The claimant must accept a lump-sum settlement in writing before November 1, 1990, or the settlement offer is void.

NEW SECTION. Section 19. Request for proposals for claims settlement. The state fund shall prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim based upon an accident occurring before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims that for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal."

Renumber: subsequent sections

3. Page 21, line 11.

Exhibit # 3
5/22/90 am HB 2

trike: "23"
sert: "25"

EXHIBIT 4
DATE 5/22/90
HB 2

Amendments to House Bill No. 2
First Reading Copy

Requested by Rep. Vicki Cocchiarella
For the Committee on Labor

Prepared by Mary McCue
May 22, 1990

1. Title, line 20.
Following: "SOLVENCY:"
Insert: "PROVIDING FOR A GENERAL FUND APPROPRIATION OF THE EMPLOYER'S PAYROLL TAX ASSESSED AGAINST SCHOOL DISTRICTS AND LOCAL GOVERNMENTS;"

2. Page 20, following line 9.
Insert: "(3) The tax amounts assessed against school districts and local governments under 39-71-2503 are statutorily appropriated, as provided in 17-7-502, from the general fund."

effective 7-1-91

EXHIBIT 5
DATE 5/22/90
HB 2

Amendments to House Bill No. 2
First Reading Copy

Requested by Rep. Cobb
For the Committee on Labor and Employment Relations

Prepared by John MacMaster
May 21, 1990

. Page 12, line 22.
trike: "and"
ollowing: "payment"
trike: ";"
nsert: ", and actuarial services. Actuarial services must be procured by competitive bidding, and the state fund may not use the same actuary for more than 3 successive years."

B2AM4

EXHIBIT 6
DATE 5/22/90
HB 2

Amendments to HB 2, white copy
Prepared for Rep. Boharski by John MacMaster

1. Title, line 20.
Following: "SOLVENCY;"
Insert: "PROVIDING A SPECIFIC METHOD OF DETERMINING PREMIUM RATES BUT ALLOWING THE STATE FUND TO USE ANY METHOD SUGGESTED BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE IN ADDITION TO OR INSTEAD OF THAT SPECIFIC METHOD;"

2. Page 10, lines 4 through 8.
Following: "part."
Strike: remainder of lines 4 through 8 in their entirety

3. Page 13, line 8.
Following: "rates."
Insert: "The state fund shall implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. To ensure that employers are charged equitable rates, the state fund:

(a) shall use employer experience modification factors;

(b) shall allow volume discounts;

(c) shall use a retrospective rating plan for an employer that requests it;

(d) may use a retrospective rating plan for an employer that has shown an inability to control accidents; and

(e) may, in addition to or instead of the rating plan provided in subsections (6)(a) through (6)(d), adopt any rating plan suggested by the national council. The state fund may only use a rating plan referred to in this subsection (6)."

HB2AM3

EXHIBIT 7
DATE 5/22/90
HB 2

Amendments to HB 2, white copy
Prepared for Rep. Boharski by John MacMaster

itle, line 20.
owing: "SOLVENCY;"
rt: "REQUIRING THAT THE RATE FOR EACH CLASSIFICATION MUST BE A PERCENT OF THE NATIONAL COUNCIL ON COMPENSATION INSURANCE'S MONTANA SUGGESTED RATE FOR THAT CLASSIFICATION, UNLESS A DIFFERENT RATE IS APPROVED BY THE COMMISSIONER OF INSURANCE, AND THAT THE SAME PERCENT BE USED FOR EACH CLASSIFICATION;"

age 13, line 8.
owing: "rates."
rt: "To ensure that there is no discrimination between classifications, the rate for each classification must be a percent of the national council's Montana suggested rate for that classification, unless a different rate is approved by the commissioner of insurance. The percent must be the same for each classification."

M2

ROLL CALL VOTE

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 5/22/90 BILL NO. HB2 Whalen amendment NUMBER 1

NAME	AYE	NAY
REP. COCCHIARELLA		✓
REP. COMPTON	✓	
REP. DRISCOLL	✓	
REP. GLASER		✓
REP. KILPATRICK		✓
REP. LEE		✓
REP. O'KEEFE		
REP. PAVLOVICH	✓	
REP. RICE	✓	
REP. SIMPKINS		✓
REP. SMITH		
REP. SQUIRES		✓
REP. THOMAS	✓	
REP. WHALEN	✓	
REP. McCORMICK, VICE-CHAIR	✓	
REP. RUSSELL, CHAIR		✓
TALLY	7	7

Terri Dore
SECRETARY

CHAIRMAN

MOTION: Driscoll (second ok) 6,7,8,10

Tie Vote — Motion fails.

ROLL CALL VOTE

BOR AND EMPLOYMENT RELATIONS COMMITTEE

TE 5/22/90 BILL NO. HB 2 NUMBER #2 Exhibit 4

ME	AYE	NAY
P. COCCHIARELLA	✓	
P. COMPTON		✓
P. DRISCOLL		✓
P. GLASER		✓
P. KILPATRICK	✓	
P. LEE		✓
P. O'KEEFE	✓	
P. PAVLOVICH		✓
P. RICE		✓
P. SIMPKINS		✓
P. SMITH		✓
P. SQUIRES	✓	
P. THOMAS		✓
P. WHALEN	✓	
P. McCORMICK, VICE-CHAIR	✓	
P. RUSSELL, CHAIR	✓	
TALLY	7	9

Jenni Doe
RETARY

CHAIRMAN

ION: Cocchiarella — motion fails

Exhibit 4

ROLL CALL VOTE

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

#3

DATE 5/22/90 BILL NO. HB 2 NUMBER Exhibit 5

NAME	AYE	NAY
REP. COCCHIARELLA		✓
REP. COMPTON		✓
REP. DRISCOLL		✓
REP. GLASER	✓	
REP. KILPATRICK	✓	
REP. LEE	✓	
REP. O'KEEFE		
REP. PAVLOVICH	✓	
REP. RICE		✓
REP. SIMPKINS	✓	
REP. SMITH		✓
REP. SQUIRES		✓
REP. THOMAS		✓
REP. WHALEN	✓	
REP. McCORMICK, VICE-CHAIR		✓
REP. RUSSELL, CHAIR		✓
TALLY	6	9

Terri Dore
SECRETARY

CHAIRMAN

MOTION: Cobb Exhibit 5

motion failed

ROLL CALL VOTE

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 5/22/90 BILL NO. HB 2 NUMBER Exhibit 7

NAME	AYE	NAY
REP. COCCHIARELLA		✓
REP. COMPTON		✓
REP. DRISCOLL		✓
REP. GLASER		✓
REP. KILPATRICK		✓
REP. LEE	✓	
REP. O'KEEFE		
REP. PAVLOVICH		✓
REP. RICE	✓	
REP. SIMPKINS	✓	
REP. SMITH		✓
REP. SQUIRES		✓
REP. THOMAS	✓	
REP. WHALEN	✓	
REP. McCORMICK, VICE-CHAIR		✓
REP. RUSSELL, CHAIR		✓
TALLY	5	10

Tenni Dore
SECRETARY

CHAIRMAN

MOTION: Exhibit 7

HB 2 AM 2 - Bohaski

motion failed

Senator Keating said there are a couple referrals in here with regard to the administrative process of the present plan. Are you leaving the benefits under workmen's comp insurance statutorily required? It would be still subject to the statutes and benefits for the private carrier? Senator Boylan said yes.

Senator Manning asked if he had compared rates in other states to Montana? Senator Boylan said he had. There are other numerous studies. The major problem in comparing them is that they are set up differently.

Senator Keating asked if under plan 3 the agency determines his own actuary?

Senator Aklestad asked why go from 3 to 4 people on page 34 line 18? Tom Gomez explained that line 25, page 33 changes that number.

Closing by Sponsor: Senator Boylan stated that the State should not be in the insurance business and this is the vehicle to get rid of a very difficult situation. I hope you see your way clear to pass Senate Bill 3.

DISPOSITION OF SENATE BILL 3

Discussion: Senator Aklestad said this bill will put the Worker's Comp up for sale and if there is no sale for the plan then the clients are distributed amongst the other insurance entities.

Amendments and Votes: None

Recommendation and Vote: Senator Keating MOVED that Senate Bill 3 DO PASS. The vote was 7 in favor of and 2 (Senator Blaylock and Senator Manning) opposed Senate Bill 3. Motion carried.

HEARING ON HOUSE BILL 2

Presentation and Opening Statement by Sponsor:
Representative Glaser, House District 98, Yellowstone County, stated this is an act separating the liability of the state workers' compensation insurance program and fun on the basis of whether the liability arises from claims for injuries resulting from accidents that occurred before July 1, 1990, or accidents that occur on or after that date; and authorizing the board of investments to make loans and to issue bonds payable by the employer's payroll tax to pay off the unfunded

liability. We have a very reasonable manner and it provides a source of funding to retire this debt. It's a continuation of this $.28 on the $100 payroll tax on all the employers subject to the Workers' Comp Fund. It provides a little more oversight so that the Legislature can see where we are and what's going to happen as time goes on. It provides assurance of public input. It takes a very tough look at where we are, where we've been and where we're going. It tries to solve the Workers' Comp in a way that people will be certain of how we're handling the $385,000,000 debt that we have. There are $65,000,000 in assets and over $300,000,000 shortfall. This is a reasonable, long term, semi-palatable solution to this problem. Business won't be afraid of the compensation system in our state.

List of Testifying Proponents and What Group they Represent:

Representative Hal Harper, HD 44, Lewis & Clark
Representative Jerry L. Driscoll, HD 92, Yellowstone
Representative Chuck Swysgood, HD 73 Beaverhead
Ben Havdahl, Montana Motor Carriers
Rick E. Bach, Council, State Workers' Comp Fund
Keith Olson, Montana Logging Assn.
Susan C. Witte, Dept. of Insurance

List of Testifying Opponents and What Group They Represent:

James Tutwiler, Montana Chamber of Commerce, Exhibit #8
Riley Johnson, NGIB
Roger McGlenn, Independent Insurance Agents of Mt.
Dennis Burr, Montana Tax Payers Association
Jacqueline Terrell, American Insurance Association
Leon Stalcup, Montana Restaurant Assn.
Alex Hanson, Montana League of Cities and Towns
George Wood, Montana Self Insurers Assn. Exhibit #2
Bruce Wheeler, M.S.B.A.
Randy Nordquist, Dept. of Insurance
Representative Glen Campbell, HD # 48
William Boharski, Exhibits #4, 5
Peter Funk, Department of Justice

Testimony: Representative Harper said that we must do something about the unfunded liability. The question in front of you is what is the cheapest way to do that. Workers' Comp is set up as an independent entity. They certify how much they need. That goes to the budget director so that the governor is involved, if the budget director agrees that a certain amount is needed. Our Board of Investments has a good track record, and they have done wonders with the investments. The Board

of Investments will decide what is the cheapest, most reliable, and best way, to find the amount of money that is needed. This bill is a negotiation process to insure that employers of this state get the best deal possible.

Representative Glaser and I got involved in this idea when we found the Workers' Comp was going to sell bonds on their own for a large amount of money. Did they have the authority to do that? This would be a state debt and the state would be liable. So, we thought we should have some control over state debt. The bonding concept seems the most sane way to get the money to capitalize this operation. We want to make the fund more responsive and more aggressive in settling these claims. Local governments and schools presently pay 0.3% payroll tax and so with this it will drop to 0.28%. There are amendments being offered.

Jerry Driscoll, HD 92, Billings stated the 1987 legislature passed a Workers' Comp bill that gave a savings of 25% plus benefits to injured workers. If HB 2 with the bonding clause goes through, you will hear testimony about the cost to employers over the 30 years. Under the 30 years scenario we will give $750,000,000 in benefits discounted at present value. The benefits go on forever, but the tax has a sunset. Workers have participated substantially. This is a state debt, whether it's a bond or unfunded liability. The Department can not settle claims in lump sums. The House version would offer injured workers a settlement of 80% of the known liability if they will take a settlement.

The present law states you must prove the settlement is in the best interest of the worker. That required an attorney and an economist to prove you were going to do something good with your life. The long term debt could be bought down through settlements. The department needs the cash to do that.

The law says they must run the plan actuarily sound. In order to do that they have to raise rates 24.3% on July 1. Construction laborers will go up from $11.00 to $17.00. Loggers were at $37.00 to $42.00 . The loggers have installed safety regulations in the last couple years. Rep. Driscoll proposes that we put some money into this plan. At 7 1/2% this was the cheapest capital he had found. We ask you to pass this bill.

Representative Swysgood, HD 73, Dillon, is standing in support of this bill. He did not support it in the

House because of the length of time it took to retire the bonds. He offered an amendment. (See Exhibit # 3 prepared by John MacMaster) He believes the Worker's Comp needs to buy down the unfunded liability and that takes cash, which they do not have. He doesn't like the payroll tax and he doesn't like the 30 year bond plan. He's offered this amendment that would shorten the bonding time and leaving the .3% tax on to do that. If we retire the debt faster, the payroll tax would come off. He also offered an amendment to a technical part of the bill. (See Exhibit # 6) We must leave the cash flow basis. I asked you to support this bill with my amendments. (See Exhibit # 10)

Ben Havdahl said that the Montana Motor Carriers Assn. would like to go on record in support of HB 2 establishing supplemental funding of the unfunded liability that exists in the State Worker's Compensation Fund. (See Exhibit No. 1)

Rick E. Bach, Legal Counsel for the State Compensation Insurance Fund, stated he is here in behalf of the state fund. He gave some amendments to the committee that would delete the Montana Administrative Procedures Act from the state fund. (See Exhibit # 7)

Keith Olson, executive director of the Montana Logging Association, said that his association supports HB 2 because they fear state fund rates will go up 24% in July and another 19% next July. Current work comp rate in Montana for logging is 37%. He addressed the rate adequacy issue. He believes the rate for loggers is very adequate. We are in our 3rd year of an aggressive safety program. If the unfunded liability didn't exist today the work comp rate for logging activities would be heading downward. He believes HB 2 is worthy of support.

Susan Witte, legal counsel for the State Auditor, Andrea Bennett, who is also Commissioner of Insurance. She stated that the Commissioner of Insurance supports HB 2 and urges the Committee to pay attention to the amendments offered by Rick Bach for the state fund. (See Exhibit #7) This deals with classification and premium rates. The commissioner believes she has the authority to review those rates, which requires the state fund to adopt rule making for classification and premium rates. You are going to get away from flexibility with that type of rating process. No other insurance company has to go through a rule making process in classifications for rate premiums. She supports the bill with that amendment included.

Jim Tutwiler, of the Montana Chamber of Commerce stated that he appeared today to oppose the manner in which HB 2 addresses the worker's compensation problem. (See Exhibit #8) I urge a do not pass on HB 2.

Riley Johnson, represents 6,000 members of the Montana National Federation of Insured Businesses. He opposes any bill that would penalize small business in Montana. In 1987 the rates were raised significantly on the payroll tax. He feels that lower risk employers should not subsidize higher risk employers. Please consider Mr. Tutwiler's suggestions that you come up with a better answer to this very uncomfortable problem. Please let the people who will pay this bill have some input in the solution. NFIB recognizes the problems of high rates in certain industries and suggests that you just change the rates and charge the rates you need to run a safe and sound worker's comp and let's keep politics out of this rate making. He asked for an appropriation from the general fund to satisfy the unfunded liability. He opposes HB 2.

Roger McGlenn, director of Independent Insurance Agents of Montana, stated they strongly oppose HB 2. It continues to move the state fund from proprietary function to government function. We believe this is wrong and dangerous. It is a continuation of one of the problems facing us today. We believe that HB 2 only deals with the symptoms of the problem and the underlying causes. In the last 2 years the Worker's Comp has collected $22,000,000 in employer payroll tax. In 1989 they received $20,000,000 from the general fund for a total of $42,000,000 plus, and yet the unfunded liability continues to grow. The general fund appropriation and the additional payroll tax was to payoff the unfunded liability. He believes all employers should be paying the same rate and not have different classifications. With employers such as school districts, state and local governments, the Montana taxpayer is further burdened. I urge you not to pass this bill.

Dennis Burr of the Montana Taxpayers Association asked the committee to reduce rates and not raise them. Please do not pass this bill.

George Wood, of the Montana Self-Insurers Association rose in opposition to HB 2. (See Exhibit # 2)

Alex Hanson of the League of Cities and Towns stated that HB 2 would cost the cities and towns of Montana a

tremendous amount of money under the terms of the bonds. Their budgets are tough. With I 105 their tax base was frozen and he asked that the committee exempt municipal governments. Safety programs have been put into place and accidents have been considerable reduced and the rate increase in unacceptable.

Bruce Wheeler of the Montana School Board Association offered amendments to HB 2. (See Exhibit #8)

Representative Bud Campbell, HD # 48, Powell County rose in opposition to HB 2.

Representative William Boharski, HD # 4, Flathead County, rose in opposition to HB 2 and offered amendments that would make the bill more agreeable.(See Exs. #4 & #5)

Leon Stalcup of the Montana Restaurant Association rose in opposition to HB 2.

Jacqueline Terrell of the American Insurance Assn. stated that the Workers' Comp Plan should require adequate rating to cover the accidents incurred.

Peter Funk from the Department of Justice directed the committee to Section 19 on page 27, line 22 where it says, "Such accounts must be transferred to the attorney general for collection." Mr. Funk stated that the attorney general prefers not to have this responsibility.

NOTE: The Committee recessed for lunch and the convening of the Senate. They will return at 2:30 p.m. Senator Aklestad called the committee back into session at 2:40 with all members present.

Questions From Committee Members: Senator Pipinich asked the Department to tell them how they could lost $475,000,000 in the last 10 years? Mr. Murphy answered that $375,000,000 is the amount of payout. Unfunded liability is in the neighborhood of $200,000,000. Court decisions, hospital costs, poor information are items that are raising our rates.

Senator Pipinich stated that if you go for 30 years the payback will be $620,000,000. That's a difference of $420,000,000. Are we going to have to eat the difference? Mr. Murphy said that is your decision.

Senator Nathe asked if after July 1, 1990 will there be enough safeguards to ensure this situation won't happen again? Mr. Murphy said that if you leave it to the

Board that you have set up, those rates should cover the expenses. But there is no guarantee that they will be sound.

Senator Lynch asked if the 24% raise in rates would be across the board. Mr. Murphy said it would be according to classification code and the experience factor.

Senator Hoffman asked Mr. Tutwiler if we can rely on figures of Worker's Comp now? Mr. Tutwiler said that the Chamber of Commerce is concerned about the veracity of rates and size of the liability. They got an outside opinion from the National Institute in D. C. Ohio had an actuary firm, Earnest and Young, that would go on record. They questioned the soundness of the figures.

Senator Keating asked Representative Harper if the Department is going to have a clean slate? What will prevent the Department from continuing the way it is? We need those assurances. Representative Harper you put faith in the Board and they will set rates.

Senator Lynch said he had problems with the bill. His daughter will be 32 years old when the bond is paid.

Rep. Glaser responded that this has become a social problem. We have to restructure the debt. Rep. Glaser said that our children and grandchildren are already obligated to pay out $800 for every man, woman and child because of the foolishness of July 1, 1990. If you use a cash flow system, the foolishness of today and tomorrow will continue to be there because businesses will not be penalized for their foolishness. This bill immediately penalizes an erroneous employer, because the plan will be operating like a private insurance company. One big problem with Workers' Comp is not the amount of premiums, but how available the system is to people. The problem is all over the nation. We and the Board will have to address this problem.

Senator Lynch said we're told we're $210,000,000 in the red before we come back next session. Is this a quick fix idea that we're going to start bonding, which really is incurring debt very similarly to what the feds do, for a quick fix rather than balance the budget. Do you see this as a precedent setter to answer our fiscal woes?

Senator Devlin asked about the amendments that would throw your schedule of payments off drastically.

Representative Glaser said that all these amendments were

offered in the House and they were all rejected, some rejected more closely than others. He supports Senator Swysgood's amendments because they define the fact that if you have money available, you must pay off the bonds. The bill currently says if you have money available you may pay off the bonds, and there is mistrust out there.

Senator Blaylock asked Jim Tutwiler if the Montana Chamber of Commerce would rather see the average rate kick in at 24% as of July 1. Mr. Tutwiler answered no, with the information we have it is not necessary to pass this bill. We think there is a way to gain the time we need to assess the true indebtedness of this fund and reconsider the funds true value. At least we need a second opinion of the true amount of what we owe.

Senator Blaylock stated that with SB 428 we commanded them to run this in an actuarily sound manner. If we are going to do that, we have to raise the rates an average of 24%. How do we get around that?

Mr. Tutwiler answered that this session needs to address the definition of an actuarily soundness and you could change that definition so that applies only to cash flow. Get the fund operating so that it is not in danger of going broke or being legally outside the laws of Montana. Before the next general session have aggressive follow through for a second opinion. We need to verify how much money we're going to need. You need to identify the size of the indebtedness.

Senator Keating asked Randy Nordquist of the Insurance Commissioners office if he was the new actuary with the Montana Insurance Commissioner? Mr. Nordquist answered that he was. Senator Keating asked if he had experience with Workers' Comp and actuaries and that sort of thing. He answered yes. Senator Keating stated that he viewed this bill as taking one problem and dividing it into two problems, and that we're trying to address both problems in a similar manner. His first concern is that if we segregate the unfunded liability from the current state fund and they start with a clean slate in July, is there something in the law that says that fund will be run any differently. The Insurance Commissioners office was brought into this last session under SB 428. Does our state fund use the National Council of Compensation Insurance rates? Senator Keating has seen rate sheets that our fund doesn't conform with many of the various categories. With you in the picture will the state fund now have to comply with charging National Council

of Compensation Insurance rates.

Randy Nordquist said that they would not be charging the NCCIs rates. Hopefully they would be using some uniform percentage of the NCCI rates. The thought being that in terms of equitability the NCCI rates are about as good as can be developed to distinguish the relative relationship between one type of industry to another. Once those rates are established, you can apply a 75% ratio to generate only a 75% of the total premium. So the target is to establish rates that will adequately fund the entire program. You have adequacy and equity.

Senator Keating said that under this law will there have to be changes in the rates?

Randy Nordquist answered that based on preliminary evaluations there will have to be substantial changes. I want to tell you about rate level adequacy. As I view their rate filings they may well have considerably inadequate rate levels proposed to be effective July 1, 1990. The National Council has been making rates for 42 states around the country for a long time. Their methods are very good. They watch carefully to ascertain that things stay equitable, that rates are adequate; it's a very good process. Here is an example. Of $100 $65 are used to pay injured workers and $35 is administrative costs. The Montana State plan proposed 65% of the NCCI advisory rates. What that means is that the state fund is proposing to collect sufficient premiums only to fund lost costs. What they propose to pay out of the premiums is lost costs, their administrative expenses and a substantial portion of the unfunded liability. The numbers are not there.

Senator Keating asked if the 24.5% rate increase is just an average and each employer is rated high or low according to risk.

Randy Nordquist answered that is true. What he looked for in the state plan was their compliance with the statute that said the state fund's rates must be based on the NCCI rates. Chapter 39 states they must use the NCCI rates as a basis for their own.

Senator Keating asked if we remove the unfunded liability from the state fund, will we still have to raise our rates an average of 24% to be actuarily sound?

Randy Nordquist answered that 25% would not be near enough.

Senator Keating asked if we separate out the unfunded liability and start that state plan fresh, under the law and under the organization as it now stands, we will have to raise the rates more than 25% no matter what we do?

Randy Nordquist answered that the unfunded liability doesn't go away. Susan Witte from the Insurance Commissioners office rose in support of HB 2 because it appeared to at least help half of the problem, the unfunded liability.

Senator Keating asked Randy if we was familiar with bonding? Have you ever seen anyone else finance their unfunded liability with bonds?

Randy Nordquist answered he has never seen another workers comp with this magnitude of unfunded liability.

Senator Keating asked Dave Lewis if we're talking about floating $300,000,000 in bonds? Mr. Lewis said he thinks the amount is $190,000,000. Senator Keating asked if we're going to arbitrage those so there is no interest? Will there be an interest expense on those?

Mr. Lewis stated that they are tax exempt bonds so we can not reinvest at rates above the tax exempt rate. We'll have to either yield restrict; in other words, find other reinvestment opportunities at the same yield as the bonds we issue. Or we will have to rebate any arbitrage to the federal government. There will be an interest cost because the money will be used to pay claims and once the money is gone it's not available for reinvestment. There will be interest costs.

Senator Keating said you have $190,000,000 worth of bonds and you will have over $100,000,000 interest over a period of time. The way we're going to fund some of this is with a .3% payroll tax on every employer. We already have that now. If we start paying off the unfunded liability, that still doesn't help us with the new program. All we're doing is retiring a debt, which we have to do, but now we're going to spend more money on interest and we still are charging .3% payroll tax to help do that. We're still going to raise rates and premiums because this bill says instead of paying bills with excess premiums, that's going to be shifted over to help alleviate the unfunded liability. This bill is a contradiction because it says it has to be even stephen, but if there is any surplus it goes to retire the unfunded liability. That doesn't track for

me. What it amounts to is that most of the people that are in the plan now are the ones who bring about the unfunded liability. So if their premiums go up and they help to pay the unfunded liability, they're helping pay for their liability. The taxpayers shouldn't have to come up with a bunch of additional interest to finance the payment of that debt. We must find another way without spending interest.

Dave Lewis stated that one major benefit to doing a bond issue is the funds at a tax exempt cost. The cost of those funds is going to be available to us at a tax exempt rate. He believes there is a benefit to the state economy by using tax exempt bonds.

Senator Keating explained that tax exempt bonds are a method for tax evasion and this would help build that and we're still going to pay interest. They may be tax free to somebody but they are not interest free. Who is going to pay the interest? Every employer in the state is going to say that's a perk to the employee and every employee will be paid less because the employer has to pay this premium for someone's mistakes.

Senator Lynch asked if the .3% that is currently being paid amount to $13,000,000 per year? Rep. Glaser said it amounts to $13,000,000 this year and it does go up as payroll expands in the state. Senator Lynch asked where is the payroll tax going now? Rep. Glaser responded that in 1987 we designated for the unfunded liability. It goes straight into the cash flow system.

Senator Lynch asked if instead of all this bonding why don't we just use the .3% toward the unfunded liability as was intended in the 1987 legislature?

Rep. Glaser said that has been going on. In 1991 we're going to spend $87,000,000 on the old obligations and we are going to run out of money shortly after we come back.

Senator Lynch asked about the unfunded liability. Will we add $150,000,000 in the next two years? Rep. Glaser responded that the actuary is actually saying that there is $375,000,000 in obligations out there. In 1991 there is $87,000,000 obligations. In 1992 there is $68,000,000 obligations. That is why the actuary is saying there will be a 25% increase by July 1.

Senator Blaylock asked Randy Nordquist about actuarial soundness.

Randy Nordquist responded that our casualty actuarial society of the American Academy of Actuaries might question actuarial soundness being delved into. If the Workers' Compensation System were to be put on basically cash flow that would violate in every sense of the word the concept of actuarial soundness. The premise of actuarial soundness is that you collect enough funds in that one year to fund all costs associated with that year, regardless of when those costs have to be paid. Also, it goes on to say you collect it as fairly as possible for the people you collect from. Actuary soundness means adequate, not excessive, and not unfairly discriminatory.

Senator Keating asked Randy if bonding would make the fund actuarily sound? Is that in terms of years? Say 8 years? We could carry this unfunded liability for 15 years and paying it off a little bit at a time.

Randy Nordquist stated that as the fund presently stands, it has an unfunded liability which means it is not actuarily sound. The prospect of separating the unfunded liability from the ongoing operations is a particularly happy prospect for the insurance department because it does allow them to get back to the concept of actuarily sound for ongoing operations. At that point the unfunded liability becomes a problem for the legislature.

Senator Blaylock asked if we didn't pass this bill would the proposed 24% increase be totally inadequate?

Randy Nordquist said that is what their preliminary examination indicates. That is a true statement. I believe the deficit would grow with only the 24% increase.

Senator Blaylock stated that we are talking about a fundamental change in state policy. Are we going to make a decision right now? Senator Aklestad said not we are not on this bill.

Senator Blaylock asked if we pass this bill and put on 24% do we still need more money?

Randy Nordquist said that is true in his estimate, unless employers suddenly installed incredibly effective safety programs, or something happened in the claims handling environment, or some change occurred that made benefit payments substantially reduced, then these rates might be adequate. Based on the status quo that is not enough money. The problem is 3 fold. You want

the state fund to be solvent. Yet you want the state fund to maintain low rates. You want the state fund to take all comers. Those 3 components are not compatible. You might throw in another component like excessively high rates for employers who do not have a safety program. 65% of the NCCI rates will not generate enough revenue to include all comers.

Senator Nathe what percent of the NCCI rates would be your suggestion?

Randy Nordquist said he didn't know, but the 65% doesn't take include those awfully high risks. Say 70% then add administrative costs of $10. The insurance department would like them to have a cushion against future adverse deviation. They should be at 85% to 90% and right now they are at 52.25% That would be a 60% rate increase.

Senator Aklestad asked Rep. Glaser about the liability of the bonding issue. If the bonds are defaulted on, who is responsible?

Rep. Glaser responded that the payroll tax is the only money dedicated in the bill to retire the debt. If the payroll tax is inadequate, the Board of Investment is to advise the legislature.

Senator Aklestad said if the fund does get into trouble, the payroll tax is not sufficient enough to pay off the bond indebtedness, the legislature does not enact legislation either to a payroll tax, general fund or anything, the bonds are at default, who is the first liable person? The employer?

Rep. Glaser answered that this is a state debt. The legislature is going to have to come up with the money.

Senator Aklestad asked if the department hires the same actuary under your bill?

Rep. Glaser stated the current actuary is hired by the Board. Obviously the Insurance Commissioner's actuary sees things differently than Drew James does. If you study Drew James recommendations, he has not been off. We have not taken his advice.

Senator Nathe asked Randy Nordquist about his experience. Are you certified? Randy answered not yet. Senator Nathe asked if he had spoken to Drew James about their differences? Randy had not spoken to Drew James. Senator Nathe asked about Randy's experience in this

field. Randy answered that the last 8 years have been dedicated solely to workers compensation insurance. He worked with state funds in Carson City, Nevada, (a monopolistic state fund) and the last 9 months with a reciprocal insurance exchange in Florida.

Closing by Sponsor: Representative Glaser stated that he relied on the legislative staff and this proposal has been well research and was badly needed. Mr. Petesch and Mr. James spent time working on HB 2. Mr. James projections have been thoroughly researched and presents the best solution to the Workers' Comp problem. He believes the lack of satisfaction of the long term debt is one of the most important negative attitudes enforce in Montana's economy. The House does not want to bandaid. There are two indicators that we should look at. One is the premium and the other is the debt. Politics, bad management and a poor economy. In this bill the House would rather take the 24%. Other states have this problem. We must solve this problem.

DISPOSITION OF HOUSE BILL 2

Discussion: None at this time.

Amendments and Votes: None at this time.

Recommendation and Vote: None at this time.

HEARING ON SENATE BILL 5

Presentation and Opening Statement by Sponsor: Senator Thayer stated that he carried SB 428 that separated the state fund into a business form. He stated that he is amazed at the different information one gets from the different departments. For the past several months he has been working on this problem with a whole different set of evidence. We need to be very careful what we do in this session. It's going to take a 2/3 majority of each house to get into this bonding mechanism. It's his opinion that we really don't have to pay off the unfunded liability. It's critical that you have enough cash flow and have enough income every year to pay those debts as they come due and operate the plan.

Senator Thayer stated the SB 5 is an act separating the liability of the state workers' compensation insurance program and fund on the basis of whether the liability originates from claims that arose before July 1, 1990 or claims that arise on or after that date; requiring

that for the portion of the premiums attributable to claims that arose before July 1, 1990, the state fund shall charge amounts sufficient to provide revenue to satisfy those claims as they become due and payable. This bill does not lock us in to a 20 or 30 year bonding program. He believes we don't need a 24.5% increase as we don't have that kind of a cash flow problem. We need a rate increase and the Department is contemplating a 5% raise anyway. I've served on the interim committee that studied the workers' comp and we asked the state actuary why an 8 year plan and he said they can't recommend going beyond 8 years. Cash flow is important and keeping our options open to a variety of ideas.

List of Testifying Proponents and What Group they Represent:

Norman Grosfield,
Dennis Burr, Montana Taxpayers Association
George Wood, Mt. Self Insurers Association
Riley Johnson, NFIB
Alex Hanson, League of Cities and Towns
James Tutwiler, Montana Chamber of Commerce
Jacqueline Terrell, American Insurance Association
Senator Paul Svrcek, SD 26, Thompson Falls

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Norman Grosfield stated that this is a much better alternative. The unfunded liability is difficult to quantify and it will never be precise and it doesn't have to be paid off today. There are 19 state funds in the U.S. and often they operate in a surplus or a deficit situation. Senator Thayer is suggesting that all future cases of liability be established on an actuarily sound basis, but for the unfunded liability you can address it on a cash flow basis. He presented an amendment to the bill requiring that future premiums must be established on an actuarily sound basis. (See Exhibit #1) The legislature is going to have to address this problem each session. This amendment puts a limit on premium collection for the coming fiscal year.

Dennis Burr of the Montana Taxpayers Association said that cash flow covers unfunded liability. There are other bills that are being considered. He believes SB 5 is the proper way to proceed.

George Wood of the Montana Self Insurers agrees with the sponsor and the amendments that have been put before the committee. His Association will work on legislation that doesn't lock in and will give some figures with accuracy. This bill only requires a 5% increase on the past liability so there is no big balloon on July 1, 1990. For that reason, he asks that you do pass this bill.

Riley Johnson of the National Federation in Business stands in support of SB 5. His comment to Senator Blaylock's question, are businesses willing to pay the bill? The answer is yes. This is an amount business could support.

Alex Hanson of Montana League of Cities and Towns said they support this bill because it gives the legislature the time for analysis. A $662,000,000 bond issue is probably one of the largest in the state.

James Tutwiler of the Montana Chamber of Commerce states they support Senator Thayer's bill with the amendment. We might want to go 1 step further and direct the Board to take a very deep look at the actuarial services they are getting and seriously consider bringing in a qualified nationally certified casualty actuary to look at this plan. He offers his help because actuaries cost about $250 per hour, so their help in that regard might be needed.

Jacqueline Terrell of the American Insurance Association stated they supported SB 428 when enacted and they support SB 5 as the preferable alternative in looking at this problem.

Senator Paul Svrcek, SD 26, Thompson Falls, feels there is no right answer, but Senator Thayer's bill offers a viable opportunity to get us to the 1991 session. There are many good things in HB 2, but in the span of this session this is the best vehicle to use to buy time for an in depth study. This is certainly the easiest to swallow.

Questions From Committee Members: Senator Keating asked Norman Grosfield if 5% of the premium goes toward the unfunded liability? Norman Grosfield answered that in this amendment 5% goes to the unfunded liability. They may need an increase to take care of rule out cases starting July 1, 1990 through June 30, 1991, assuming there was no unfunded liability at all. This would be on top of that.

Senator Keating asked Mr. Murphy asked about the Departments projected liability for 1991. The total unfunded liability for 1991 is $86,000,000. Do you have to pay that many claims? Are those the benefits we have to pay in 1991?

James Murphy answered yes that is the pay down on all the liabilities from 1990 to 2021. What that says is that before July 1, 1990 there is an estimated $86,672,000 payment. So in this bill, coupled with the cash that we have has to generate at least that much money, plus the law says we have to be actuarily sound for what we anticipate the claims forward. He says that's a substantial rate increase.

Senator Keating asked if this means you must have $86,000,00 cash flow to meet these obligations? Mr. Murphy answered past obligations cash flow. Sen. Keating said those are current obligations because they caught up with us? Mr. Murphy answered true.

Senator Keating asked if you also have current claims for 1991, you may be looking at $100,000,000 total?

James Murphy answered that is right. Mr. Murphy said probably more than $100,000,000.

Senator Keating said so the .3% will raise $13,000,000 so that means we have to come up with more than $90,000,000 cash flow to meet all these obligations. Where are we going to get it?

Mr. Murphy answered that you're going to increase rates. He said cash flow pre July 1, 1990 claims is $86,000,000. Post July 1, 1990 claims the concept is to provide for those on an actuarily sound basis. That means you have enough money in the bank to pay for those liabilities for those claims. So that all the claims after July 1 we would have to anticipate what they will be and increase rates to take care of that. Our actuary believes that is substantially more than 24%.

Senator Keating asked Dennis Burr if he agreed that we have to come up with $100,000,000 in 1991?

Dennis Burr answered that the fiscal analysist had a total figure for 1991 on page 7 a total of $110,500,000 estimated payout. The income to the fund is the premiums = $89,000,000, payroll tax = $13,500,000, investment income = $2,500,000 which totals $105,000,000 cash flow in. This shows that you need 5% to cover cash flow. You are not putting anything

into reserve. We are not going to be able to do that at least for this year. SB 5 is a way to get to next January. What the amendment says is that the 5% increase will go toward reserves. With the 5% increase for this year and next year both would break even.

Senator Manning asked if you separate out would you have enough cash flow to eat away at the unfunded liability?

Norm Grosfield answered that you are separating out the two funds for rate making purposes but for the payments to claimants it is all one fund. Use the money the state fund has available when it comes to the calculation to determine rates, you separate the old and the new out. Under this scenario you would have enough cash flow to pay all legitimate claims on time and you could probably go for a number of years on cash in and cash out. It would be better to eat away at the unfunded liability. Possibly there are other sources of income that you may consider later.

Senator Aklestad asked Senator Thayer about the 30 day notice requirement in your amendment. Is that the same amendment that Rep. Driscoll was concerned about on the House floor last night? Senator Thayer answered that he wants to get that amendment in.

Senator Aklestad asked Senator Thayer about the first amendment. Is it to give assurance that 5% of the premium cannot go against the unfunded liability? Why is that a necessity?

Senator Thayer explained that this 5% is going to be additional income that can be used against the unfunded liability. The numbers he got from Scott Seacat indicate that we can get through 1991 without any increase. I think it is prudent that we address the unfunded liability with a 5% increase. I think they are already contemplating something just under 5% that is needed because of the new business and keep those on an actuarily sound basis. If this bill passes employers across the state of Montana will be looking at approximately a 10% increase. That's much better than 24%.

Senator Aklestad asked in your bill will the payroll and premium money all go into one pot and there will be a separate calculation to satisfy the audit phase? Senator Thayer stated that is correct.

Closing by Sponsor: Senator Thayer stated that it will hurt us to go into bonding at this time. There are so many numbers

floating around that we must analyze the fund. A number of people have offered assistance to work out something. There are alternative ways of solving this problem. I suggest that we take a few modest increases as we go along and handle the unfunded liability as well. This bill eliminates the need for a 24.5% increase. The business people are saying take a 5% anyway. They know the department needs that much to keep in compliance with the law. This is a better policy than locking ourselves into 30 year bonding.

DISPOSITION OF SENATE BILL 5

Discussion: Senator Thayer stated that Mary McCue needed time to write the technical amendments. Senator Aklestad called attention to page 3, line 18 after the word collection and disregard all the rest of the verbiage.

Senator Keating said he didn't think the intention was to limit all rates to apply to a 5% increase but that portion of the rates that are payable for the unfunded liability. We still have to raise rates to cover the actuarial on the rest of the fund on current benefits, but that they can't raise the rates more than 5% each year on that portion to cover the unfunded liability.

Senator Aklestad asked if the language after the word "collection" gives legislative intent.

Senator Keating said it should read something like this, "however, the state fund cannot increase total premium rates for the unfunded liability for the fiscal year commencing July 1, 1990 not exceeding 5% immediately preceding fiscal year's total premium collections for the unfunded liability."

Senator Aklestad reiterated his statement of disregarding everything after the word "collection". This is really just legislative intent and shouldn't be in the bill. The only reason we'd leave it in there would be for judicial review. Tom Gomez of the Legislative Council stated that he and Mary McCue had discussed making that verbiage into "Legislative Intent" and she will put that in a separate purpose provision.

NOTE: Chairman Akelstad recessed the committee at 6:45 p.m. On May 24, 1990 at 9:00 a.m. everyone returned and began executive action.

Amendments and Votes: Senator Lynch MOVED the AMENDMENTS to SB 5 that Mary McCue had placed before the committee.

Mr. Murphy said that is old claims. That amount will be paid out next year on old claims. The new claims will approximately be $20,000,000.

Senator Aklestad called for a vote on the amendments. The VOTE was UNANIMOUS in FAVOR OF Senator Thayer's amendments written by Mary McCue. (See Exhibit #1)

Recommendation and Vote: Senator Lynch moved that SB 5 DO PASS AS AMENDED.

Senator Aklestad suggested that in the Statement of Intent we direct the interim committee to stay active and look at other proposals to finance works comp to present to the next legislative body.

Senator Blaylock said he would like it very general that that committee continue to work. There is no magic philosophy out there.

Senator Keating said that the Supreme Court has ruled that the department is not permitting lump sum payments like they should, which may impact the cash flow. There ought to be some source of revenue for supplementing the cash flow from the premiums and the payroll tax. The potential for a limited amount of bonds as a sudden source of revenue to assist that shortfall in the event of catastrophic claims is a suggestion. There might be other methods, maybe even the general fund be used in the event of that catastrophe. Or a 1% surtax on income tax or some mechanism that we could fall back on for supplementing the cash flow in the event we do have an inordinate number of lump sum claims that have to be paid immediately.

Senator Lynch said we'll be back in 1991 and I don't think there will be a catastrophe prior to that. I think the interim committee should further their study. I propose we pass the bill with these amendments. We probably are amending a dead horse anyway. I understand that the House is not going to accept anything short of the bonding issue.

DISPOSITION OF HOUSE BILL 2

Discussion: Senator Aklestad said that the Senate will not accept HB 2 in it's present form and the House has given indication that they would not accept SB 5 as amended. Since that is the situation and this is probably the most important subject matter in the state, it would be his recommendation that we take the subject matter of SB 5 and mold that into HB 2. Take

all of HB 2 except the first portion of the title, which is calls for the separation portion. And take that portion of HB 2 that deals with lump sum provisions. We can make certain that HB 2 is broad enough so that it doesn't put us into a situation if the monies are not there for the buy out that the account is not subject to judicial scrutiny. So as the monies come available we can make lump sum payments. At least the mechanism is there. There is another advantage to that would be is so we would be able to deal with something within the legislative framework of both bodies. If we don't do that we're going to send SB 5 to the House and it will be killed. If we send HB 2 with our mechanism in it, that will go to the House floor, rather than into committee. We don't need a 60% vote, it would just need a majority vote and we're hoping that the House will act to go into a free conference committee and see if we can come back and deal with something. All the subject matters in both bills would be discussed. At least the legislature is still dealing with the subject matter. If we don't do that the legislature will lose control of the situation. This is an important matter and we want to get both house involved again and get something done.

Senator Lynch agrees with this plan. The amendments will be quite extensive. Is it correct that you are taking the bonding completely out of HB 2? Allow the House to reconsider and see if they want to go to conference. It certainly seems like we're still talking together.

Senator Blaylock would like to hear from the Legislative Council that the Supreme Court did not say that we have to start paying lump sum payments. All that decision says is that the Division can not just say we will not consider lump sums. There is great diversity over whether that really impacted the fund by $10,000,000.

Mary McCue responded that language in statute said that if they could not agree on a lump sum that the insurer could say no and that was not a reviewable issue. So the case says that is a reviewable issue. She thinks that everyone now can't come in and say we want a lump sum out. There is still going to have to be some sort of test. What is not there from the decision is what is that test going to be because there isn't one in the law?

Recommendation and Vote: Senator Lynch withdrew his motion to move SB 5.

Senator Keating MOVED that we merge HB 2 and SB 5. He said there are parts of HB 2 that are beneficial and parts of SB 5 that are beneficial and that's what we're trying to do.

Senator Lynch asked if the Montana Administrative Procedures Act will still be in the new bill? Mary McCue thought not. If you take the bonding out do you take MAPA out, also? Mary McCue responded that those are unrelated issues.

Senator Aklestad said that we could deal with details in the free conference committee. What we're trying to do is keep something alive.

Senator Keating asked if we are going to work on the deletions or are we just lumping the two together to give it a name?

Senator Aklestad recommended that we take HB 2 with part of the title that deals with separation and put SB 5 as amended in and take the portion of the lump sum provision and put that in and run with that. We will rely on the staff to put this in order and hit the Senate floor with it and clean it up then and send it to the House. SB 5 is a short bill. What we're taking out is a lengthy, poorly understood bill.

Senator Keating said you're trying to slide amended SB 5 under HB 2 title.

Senator Keating and Senator Lynch wanted to go through the title and make certain of what they were going to do.

Mary McCue said what they would retain would start on line 4 "an act" down through "that date" on line 9. Then we delete "establishing" down through "June 30th, 2020" on line 23. Then retain the verbiage beginning with the word "providing" down through "lump sum settlements", and on to page 2 through "adjustors". From there on there would be technical changes and some references to the sections that are in Senator Thayer's bill. Then we'll add from Senator Thayer's bill "the state fund shall charge amounts sufficient to provide revenues, satisfy claims as they become due and payable."

Senator Lynch called for the question.

Chairman Aklestad called for a vote on the MOTION by Senator Keating to merge HB 2 and SB 5 incorporating the title as we just discussed. The VOTE was UNANIMOUS IN FAVOR OF the motion.

Senator Blaylock asked for a grey copy of the bill. Mary McCue said yes, they would do it as fast as possible.

RECOMMENDATION AND VOTE: Senator Lynch MOVED that HB 2 BE CONCURRED IN AS AMENDED.

Senator Keating asked if we are going to review the grey bill in committee? Senator Lynch felt confident in the Council staff that the committee didn't have to meet on it. Senator Keating thought the public might like to see the grey bill. He said we're talking serious ramifications here and he'd like to temper our haste a bit. Departments and the public need to look at it.

Senator Aklestad asked for a time frame. Mary McCue said they would try to have it ready when the Senate convenes at 1:00. Senator Lynch said the public will have time while we're caucusing to go over this proposal.

Chairman Aklestad called for a vote on Senator Lynch's motion. The VOTE was UNANIMOUS IN FAVOR OF HB 2 AS AMENDED. Motion carried.

ADJOURNMENT

Adjournment At: Recess at 12:30 p.m.; reconvene at 2:30 p.m. Adjourned at 5:00 p.m. The reconvened at 8:30 a.m.on May 24 and adjourned at 11:00 a.m.

SENATOR GARY AKLESTAD, Chairman

GA/dh

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: May 23, 1990 9:am.

	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING	X		
SENATOR SAM HOFMAN	X		
SENATOR J.D. LYNCH	X		
SENATOR GERRY DEVLIN	X		
SENATOR BOB PIPINICH	X		
SENATOR DENNIS NATHE	X		
SENATOR RICHARD MANNING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR GARY AKLESTAD	X		

NEW SECTION. Section 6. Exemption from notice requirement. The 30-day notice requirement imposed under 33-15-1106 does not apply to rate changes effective July 1, 1990, that occur in response to the provisions of [this act].

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

BE CONCURRED IN AS AMENDED

Signed: _____

Gary C. Aklestad, Chairman

fiscal year's total premium. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated and adequate actuarially determined reserves are determined.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund."

NEW SECTION. Section 4. Settlement of fixed benefit claims that arose prior to July 1, 1990. (1) The state fund shall offer a lump-sum settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability, other than liability for medical benefits, and has fixed benefits. The lump-sum settlement must be 80% of the amount of liability accepted by the state fund, discounted to present value. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability, other than liability for medical benefits, in exchange for accepting the lump-sum settlement. The claimant shall accept a lump-sum settlement in writing before November 1, 1990, or the settlement offer is void.

(2) If the lump-sum settlement offer made pursuant to subsection (1) is not accepted, the lump-sum law in effect on the date of the injury applies.

NEW SECTION. Section 5. Request for proposals for claims settlement. The state fund shall prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim that arose before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal.

methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to treat claims that arise on or after July 1, 1990, is to separate the liability of the state fund for the purpose of establishing premium rates on the basis of whether a claim arose before July 1, 1990, or on or after that date.

Section 2. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan is established under 39-71-431 and is in effect. ~~The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves.~~ For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record."

Section 3. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund -- rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications ~~so that the state fund will be neither more nor less than self-supporting.~~ in amounts sufficient to provide revenue to satisfy claims as they become due and payable. However, in order to assure this cash flow in the future, the state fund shall increase total premium rates for the fiscal year commencing July 1, 1990, by 7% of the immediately preceding

SENATE STANDING COMMITTEE REPORT

May 24, 1990

MR. PRESIDENT:
We, your committee on Labor and Employment Relations, having had under consideration House Bill 2 (third reading copy -- blue), respectfully report that House Bill 2 be amended and as so amended be concurred in:

Sponsor: (Senator Thayer)

1. Title, lines 9 through 23.
Following: "DATE;" on line 9
Strike: remainder of line 9 through "2020;" on line 23
Insert: "REQUIRING THAT THE STATE FUND SHALL CHARGE AMOUNTS SUFFICIENT TO PROVIDE REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE; REQUIRING THAT THE STATE FUND SHALL INCREASE PREMIUM RATES BY 7 PERCENT TO ASSURE SUFFICIENT REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE;

2. Title, page 2, lines 2 and 3.
Strike: "39-71-116," on line 2 through "THROUGH" on line 3
Insert: "39-71-2311 AND"
Following: "39-71-2316," on line 3
Insert: "MCA;"
Strike: "39-71-2321,"

3. Page 2, lines 4 through 7.
Strike: all of line 4 through "DATE" on line 7
Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 2, following line 7.
Insert: "STATEMENT OF INTENT
The legislature recognizes that the unfunded liability currently existing in the state fund cannot be fully addressed at this time. The legislature further recognizes that the unfunded liability will have to be addressed from time to time in future legislative sessions; that other sources of revenue may have to be obtained from time to time to assist in reducing the unfunded liability; and that because of the current state of the economy and because of the current premium rates being charged employers, there should not be a substantial increase in premium rates at this time."

5. Pages 2 through 31.
Strike: everything after the enacting clause
Insert: "NEW SECTION. Section 1. Purpose of separation of state fund liability as of July 1, 1990. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other

SENATE LABOR & EMPLOYMENT
EXH'BIT NO. 1
DATE ~~HB2~~ May 23, 1990
BILL NO. HB2

MONTANA MOTOR CARRIERS ASSOCIATION INC.

B.G. HAVDAHL, EXECUTIVE VICE PRESIDENT
501 NORTH SANDERS
P.O. BOX 1714, HELENA, MONTANA 59624
TELEPHONE: AREA CODE 406 442-6600

Statement of the Montana Motor Carriers Association
House Bill 2, Special Session Montana Legislature
May 22, 1990

For the record, my name is Ben Havdahl, Executive Vice President, Montana Motor Carriers Association. MMCA would like to go on on record in support of House Bill 2, establishing supplemental funding of the unfunded liability that exists in the in the state workers compensation fund.

MMCA supported the assessment of the 0.3% tax on all employers in Montana when it was enacted in 1987 and renewed to June 30, 1991 in 1989. Our position has not changed.

Under HB 2, we support the issuance of bonds for the repayment of the estimated $220 million unfunded liability of the fund and the enactment of the employer's tax on all employers to retire those bonds.

Montana Motor Carriers Association has some 375 carrier members and 125 supplier members. Effective June 1, 1990, the Log Truckers Association of Montana will merge into MMCA expanding the trucker membership by an additional 200 members. MMCA trucker members are and will continue to suffer economically from high costs of doing business in Montana. The highest single cost of operation for the vast majority of our members is the cost of workers compensation insurance premiums.

MEMBER ATA

Reaction to the high cost, has been an influencing factor for truckers in Montana to relocate their operations or reemploy drivers outside of Montana.

MMCA is fully aware of the increased premium needed for payment of the unfunded liability obligation of some 220 million dollars , if the alternative outlined in HB 2 is not enacted, truckers in Montana will be faced with estimated premium increases of 45% or more over the next tow year period. Current rates of 14% and 15% now assessed on over-the-road truckers and log haulers, would increase to 21% and 22%. This increased cost would, without a doubt, seriously impact an already economically depressed trucking industry in Montana and be the direct cause of exporting truck driving jobs outside the State.

MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary

EXHIBIT NO. 2
DATE 5-23-90
BILL NO. HB2

For the record, my name is George Wood, Executive Secretary of the Montana Self-Insurers Association. I arise in opposition to House Bill 2. The bill transfers the liabilities of the State Fund to the State of Montana and then provides for payment of these liabilities by a tax on employers only.

The Concept is Flawed. The tax is placed on employers only and further the tax is levied on employers other than those insured by the State Fund to pay State Fund liabilities. The tax is a tax on jobs collected by a payroll tax as an income tax is a tax on income collected, in great part, by a withholding tax on wages and salaries.

The Collection of the Tax is Flawed. The employer who pays a higher wage pays more in taxes than one who pays a lesser wage. This is compounded because an employer who hires a greater number of employees will pay a higher tax. The tax paid by an employer who pays $10 per hour will be 2½ times as much as one who pays $4 per hour.

The Disbursement of the Tax is Flawed. The primary purpose of this bill at this time is to avoid an announced State Fund premium rate increase of 24% on July 1, 1990, and 24% premium rate increase on July 1, 1991. This would provide a rate subsidy of 24% to employers insured by the State Fund. The employers with a premium rate of $1 per hundred dollars of payroll with a subsidy of .24 per hundred dollars of payroll and an employer whose premium rate is $30 per hundred dollars of payroll with a subsidy of $7.20 per hundred dollars of payroll. The premium rate

409 Agnes • Missoula, Montana 59801 • Phone (406) 549-8849

paid represents the usage of and costs to the State Fund of each code classification. The more usage and the higher the costs, the greater the premium rate. The bill provides, as previously indicated, the higher the rate the greater the subsidy.

The bill appears to have "equal protection" problems. The use of the state's taxing power to tax employers to subsidize the premium rates of other employers. The approximate initial tax, by plan would be:

Plan 1	45 employers	$2,000,000.+
Plan 2	4700 employers	$4,000,000.
Plan 3	27000 employers	$6,500,000+.

The non State Fund employers, who would receive no rate subsidy, will pay 45 to 50% of the tax.

The figures issued for the State Fund deficit are truly awesome. From the figures, I have received, the discounted unfunded liability is now $207,000,000. This represents a State Fund liability which will require "total projected liability payments of $375,467,000 which will require a payroll tax income of $662,966,277. To use the words in the bill "it may increase."

The figures are awesome and leaves one with doubts of their validity. When State Fund legislation was passed during the session in 1989, we heard a figure of $157,000,00; since then we have heard $197,000,000 then $217,000,000 then $197,000,000 and now $207,000,000. These are the discounted figures. The actual projected liability figures would also vary before settling now at $375,467,000.

How accurate are the present figures? We won't know until we have had an independent claim audit by knowledgeable adjusters who set

reserves on Montana claims and a review of these figures by a Certified Casualty Actuary. We would be more comfortable in advising on solution if we were sure of the monetary size of the problem. Remember, the discounted figure has risen despite employer tax payments to date of about $35,000,000 and general fund appropriation of $20,000,000.

This bill is probably premature.

The bill needs some amendments in addition to the problems previously cited.

1. The separation date is July 1, 1990, the new State Fund went into operation January 1, 1990, and the Reform Act of 1987 went into effect July 1, 1987. A date of separation other than July 1, 1990, is probably needed.

2. The State Fund is an insurer of last resort, yet provisions still remain in the bill for an assigned risk pool. If there is an assigned risk pool, the State Fund is not the insurer of last resort.

3. The bill speaks to transferring the liabilities for injuries resulting from an accident and doesn't mention the transfer of liabilities due to occupational diseases.

4. The bill is unclear as to whether the State Fund or the Board of Investments is to manage the liabilities. Are the adjusting services to be contracted or assigned the State Fund? The difference in costs may be great.

5. The bill indicates that legislative oversight should be increased but doesn't specify how this is to be done and the possible conflict with the Board of Directors. The bill should make the State Fund truly independent.

6. The bill doesn't indicate why a loan is necessary. If all State Fund assets, amounts unknown, are transferred then, of course, start-up money is needed and should be paid from premium rates.

7. The bill removes all liabilities from the State Fund but gives them a book of business of $90,000,000 to $100,000,000 which has value which should be assigned and payments made to the liability fund created.

8. New Section 5 has unclear language of the amount of money that can be transferred annually from tax and bond revenue to the liability fund.

9. The bill limits the bond issues to $220,000,000 when liabilities are projected at $375,467,000.

10. Page 7 (5) unproofed draft--"all loan and bond proceeds given to the State Fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds. This is unclear--why would loans and bond proceeds given to the State Fund be used for the costs of giving the loan proceeds and issuing the bonds?

11. Section 7 Amendments to 39-71-2311 has some wording that is unclear and some that is difficult to reconcile.

(a) The State Fund is a nonprofit, independent public corporation--not a state agency, required to insure any employer requesting coverage unless an assigned risk plan is in effect. Is it an employer of last resort or not?

(b) "Unnecessary surpluses" created by the imposition of premiums--what is an "unnecessary surplus"--who makes that judgment?

(c) "For the purpose of keeping the fund solvent, it must implement variable pricing levels within individual rate classifications . . . ." It is difficult to understand how variable pricing levels are to be used to keep the fund solvent. Are these variable pricing levels to be something in addition to those provided by accepted national standards? If so, how are these variable rates to be determined?

12. The relationship between the State Fund as a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers and the duties of the Commissioner of Insurance to enforce these laws becomes more unclear.

13. Section 7 - The State Fund is a nonprofit, independent public corporation -

Section 8 (4) - The State Fund is a state agency. Can it be both?

14. Section 9 gives the Fund's Board of Directors full power, authority and jurisdiction over the State Fund. This is in conflict with other sections of the bill which limit full power, authority and jurisdiction of the Board.

15. Rules necessary to comply with the Administrative Practices Act in setting rates for 400 classifications could be difficult to implement and, if tried, very costly to the Fund.

16. Appears new State Fund can declare dividends but not pay them to individual employers until the liabilities incurred prior to July 1, 1990, are funded--not paid. No procedure for requiring money that can be

declared a dividend be transferred to liabilities fund. It could be used for rate reductions.

17. The term "reasonable" surplus is used. How much is reasonable?

18. "The burden of this unfunded liability should not be borne by those employers who have insured with the State Fund because the availability of insurance to all employers through the State Fund has benefited all employers who have Workers Compensation Coverage." How?

19. The job tax starts at 0.28% but doesn't provide this is the maximum. In fact, it allows increases in the tax. Shouldn't it be up to 0.28%. The bill allows confrontations on payroll tax each legislative session.

20. Confusion in use of Department. Does it mean Department of Labor and Industry part of the time and Board of Investments part of the time?

21. The bill provides:

(a) "This act is effective on passage and approval and terminates June 30, 2020."

(b) "[Sections 1 through 14 and 16 through 23] are effective July 1, 1990."

(c) "[Section 15] is effective October 1, 1990, and applies to wages payable on or after July 1, 1990." These 3 sections when read together seem to be contradictory.

22. What is the effect of the severability clause on this bill? It appears that the failure to obtain an affirmative vote of 2/3 of members of each house somehow allows passage of bill. If this can be done, what happens to be job tax?

This bill has innumerable problems in concepts, potential legal problems and drafting. It asks us to fund a deficit, amount undetermined, whose creation created no benefit to us, with a moveable tax rate for a period of 30 years.

That really asks us to buy a pig in a polk.

The bill should be reported

DO NOT PASS

George Wood
Executive Secretary

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 5-23-90
BILL NO. HB2

Amendments to House Bill No. 2
Third Reading Copy

Requested by Rep. Swysgood
For the Committee on Labor and Employment Relations

Prepared by John MacMaster
May 23, 1990

1. Page 19, line 24.
Following: "paid"
Strike: ", dividends"
Insert: "and until all bonds and loans under [sections 3 and 4] have been retired or paid, money paid into that account under this subsection and any further money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1991, and used to pay and administer those claims. Future premiums must be reduced by the transferred amounts. After that, dividends"

2. Page 28, line 7.
Following: line 6
Insert: "Any tax money in the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, that is a surplus not needed for purposes of that account must be used for the early payment of loans given and the early retirement of bonds issued under [sections 3 and 4]."

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 5-23-90
BILL NO. HB2

Amendments to HB 2, white copy
Prepared for Rep. Boharski by John MacMaster

1. Title, line 20.
Following: "SOLVENCY;"
Insert: "REQUIRING THAT THE RATE FOR EACH CLASSIFICATION MUST BE A PERCENT OF THE NATIONAL COUNCIL ON COMPENSATION INSURANCE'S MONTANA SUGGESTED RATE FOR THAT CLASSIFICATION, UNLESS A DIFFERENT RATE IS APPROVED BY THE COMMISSIONER OF INSURANCE, AND THAT THE SAME PERCENT BE USED FOR EACH CLASSIFICATION;"

2. Page 13, line 8.
Following: "rates."
Insert: "To ensure that there is no discrimination between classifications, the rate for each classification must be a percent of the national council's Montana suggested rate for that classification, unless a different rate is approved by the commissioner of insurance. The percent must be the same for each classification."

HB2AM2

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 5-23-90
BILL NO. HB-2

Amendments to HB 2, white copy
Prepared for Rep. Boharski by John MacMaster

1. Title, line 20.
Following: "SOLVENCY;"
Insert: "PROVIDING A SPECIFIC METHOD OF DETERMINING PREMIUM RATES BUT ALLOWING THE STATE FUND TO USE ANY METHOD SUGGESTED BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE IN ADDITION TO OR INSTEAD OF THAT SPECIFIC METHOD;"

2. Page 10, lines 4 through 8.
Following: "part."
Strike: remainder of lines 4 through 8 in their entirety

3. Page 13, line 8.
Following: "rates."
Insert: "The state fund shall implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. To ensure that employers are charged equitable rates, the state fund:

(a) shall use employer experience modification factors;

(b) shall allow volume discounts;

(c) shall use a retrospective rating plan for an employer that requests it;

(d) may use a retrospective rating plan for an employer that has shown an inability to control accidents; and

(e) may, in addition to or instead of the rating plan provided in subsections (6)(a) through (6)(d), adopt any rating plan suggested by the national council. The state fund may only use a rating plan referred to in this subsection (6)."

HB2AM3

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 5-23-90
BILL NO. HB 2

Amendments to House Bill No. 2
Third Reading Copy

Requested by Rep. Swysgood
For the Committee on Labor and Employment Relations

Prepared by John MacMaster
May 23, 1990

1. Page 6, line 9.
Following: "(2)"
Insert: "and unless bonds cannot be sold"

STATE FUND MONTANA

STATE COMPENSATION MUTUAL INSURANCE FUND
P.O. BOX 4759
HELENA, MONTANA 59604-4759

Stan Stephens, Governor
GENERAL INFORMATION (406) 444-6500

May 23, 1990

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #7
DATE 5-23-90
BILL NO. #B2

Senate Committee on Labor
Montana Senate
Capitol Building
Helena, MT 59620

RE: Application of the Montana Administrative Procedures Act to the State Fund Under House Bill No. 2

The State Fund is concerned about the specific application of the Montana Administrative Procedures Act (MAPA) to its operations under H.B. 2 for the following reasons:

Under S.B. 428 of the 1989 Legislature, the State Fund was designated a mutual insurer, to be run as a mutual insurer, with all powers vested in its Board of Directors to perform all functions "as fully and completely as the governing body of a private mutual insurance carrier." The provisions of H.B. 2 now denigrate this concept by requiring promulgation of rules which necessitate publication of rule proposals, opportunity for public comment, the possibility of public hearings required because of the large volume of interested persons, and requiring the State Fund to hold contested case hearings pertinent to its own rules.

Under the provisions of S.B. 428, the State Fund is already answerable to the Montana Insurance Code, the regulation by the Insurance Commissioner's Office, and the statutes and administrative rules under the Department of Labor and Industry pertaining to workers' compensation insurance. The application of MAPA on top of these regulations makes the State Fund into an unwieldy bureaucratic animal.

Even if application of MAPA was limited to the promulgation of procedures for publishing rates and classifications, arguably, every time the State Fund changed a rate or reduced benefits, a policyholder or claimant would be entitled to a contested case hearing under the provisions of Section 2-4-102(4), MCA. That section reads: "contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an

opportunity for hearing. The term includes but is not restricted to rate making, price fixing and licensing."

With regard to setting rates and classifications under the Montana Insurance Code, Montana is what is known as a "file and use" state. That is, an insurer must first actuarily determine appropriate rates for a given class, file them with the Insurance Commissioner, give 30 days' notice to its policyholders, then put the rates into effect. If a policyholder objects, hearings are held with the "C & R" Committee at the Insurance Commissioner's office. See Sec. 39-16-1012, MCA.

The additional application of MAPA would give the policyholder a separate and additional forum in which to pursue objections to rates or class codes: a contested case hearing before the State Fund. In such a procedure, the ultimate right to implement proper rates and class codes may not be fully determined until all appeals have been exhausted, possibly several years time. This procedure could expect to be replayed by a multitude of policyholders every time rates are increased.

Aside from the fact that the requirement to promulgate rules and hold contested case hearings is duplicative with regard to other procedures to which the State Fund must presently comply, there is the fact that any contested case hearing held by the State Fund may violate a petitioner's right to due process. In the Workers' Compensation Court decision, Sky Country v. State Fund, WCC No. 8909-4913, the Workers' Compensation Court found that where a state agency is 1) in an ajudicatory position (issues findings, conclusions and order); 2) is a party to the proceedings; and 3) receives the pecuniary benefit from any decision which it makes, then the agency has a conflict of interest with regard to the outcome of the proceeding.

The impact of the Sky Country case, is that any proceeding in which the State Fund has held a contested case hearing as required under MAPA, would ultimately be thrown out by the Workers' Compensation Court or the Montana Supreme Court for violating the policyholder's right to due process. The affect of requiring the application of MAPA to the State Fund, therefore, is the creation of an impossibility, so far as can be determined at this point.

It may well be that the State Fund can hire independent hearing examiners to hear each and every contested case hearing which it is required to hold under the Montana Administrative Procedures Act. The cost to the State Fund would be substantial and again, there is no guarantee that the State

Fund can lawfully delegate authority which it cannot legally exercise itself, that is, the authority to render a decision on a contested case hearing.

As a final note, as counsel for the Commissioner of Insurance from 1983 to 1985, I initiated the receivership proceedings against both Glacier General Assurance Co. and Life of Montana. I can attest to the fact that the insurance regulations of this state do work to protect both the public and the policyholders from improper insurance procedures and insolvency. I have not yet, however, seen circumstances where an insurer must comply with the insurance statutes or codes of its state and be subject to the regulation of the Insurance Commissioner's Office, while also being required at the same time to promulgate rules and hold contested case hearings with regard to its own claims handling and rate setting procedures.

I cannot tell you at this juncture that it is an absolute impossibility to comply with both MAPA and the Montana Insurance Code; however, I <u>can</u> tell you that it would be a difficult proposition at best. If we are a state agency and MAPA must apply, then strike the application of the Insurance Code from the operations of the State Fund. If, on the other hand, we are to operate as S.B. 428 intended, then give the State Fund the opportunity to operate as "a domestic mutual insurer", whether a state agency or not, without saddling it with an additional set of procedures that will ultimately serve no purpose other than to add to the problems already faced by this "insurer of last resort".

The amendments proposed by the State Fund to H.B. 2 would delete the application of MAPA to the State Fund. The State Fund urges the Committee to consider this proposal.

Should you have any questions at any time, please feel free to call me at my office, 444-6480.

Sincerely,

Richard E. Bach by df

RICHARD E. BACH
State Fund Legal Counsel

REB/df/1928

Exhibit 7
5/23/90 HB 2

AMENDMENTS TO HOUSE BILL 2
(Third Reading)

1. Page 17, lines 12 through 18.
Strike: subsection(4) in its entirety

2. Page 18, line 12.
Strike: "rule making"
Insert: "by-laws"

3. Page 18, line 22.
Strike: "rules"
Insert: "by-laws"

4. Page 19, lines 5 through 8.
Strike: "Classifications" on line 4 through "31" on line 4

5. Page 21, line 6.
Strike: "rules"
Insert: "by-laws"

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #8
DATE 5-23-90
BILL NO. HB 2

MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730 • HELENA, MONTANA 59624 • PHONE 442-2405

Testimony of the
Montana Chamber of Commerce
by
Jim Tutwiler, Public Affairs Manager
on House Bill 2 (Workers Compensation)
in the Special Session
May 21, 1990

For the record my name is James Tutwiler representing the Montana Chamber of Commerce. The majority of our some 1,000 members are small businesses located throughout Montana.

Our purpose in appearing here today is not to oppose solving the State Fund's liability problem but to oppose the manner in which the bill before you addressed that problem.

Of upmost concern to many Montana businesses is the imposition of a payroll tax. As we are all well aware, a temporary payroll tax was enacted in 1987 to June 30, 1991. Since enactment employers have been paying about 13 million a year. The bill here in question would authorize the payroll tax for an additional 30 years and cost employers in this state as much as 662 million dollars. We believe such a tax is unwise and unwarranted. A payroll tax adds significantly to existing business taxes in Montana that, today, are among the highest in the nation. A payroll tax is an inequitable tax because it

requires all employers, whether or not they subscribe to the state fund, to pay. And most certainly a payroll tax is a tax on jobs. It forces employers who pay the best wages to pay the most tax. We should be moving, and the legislature made a start in 1989, to bring Montana's business taxes in line with taxes in competing states. Adding a 30 year payroll tax now in this Special Session moves us in the wrong direction.

Montana businesses are understandably skeptical of reports of the amount of the unfunded liability and what that liability represents.

We must confess to our own frustration and lack of expertise regarding the unfunded liability's true size, why it continues to grow, and how and when and who should pay the bill. We did the best we could by asking Ernst and Young, a nationally recognized firm experienced in workers compensation actuarial and management matters, for their advice and assistance. After examining current reports on the State Fund, Ernst and Young concluded that the latest calculation of funding requirements does not appear to employ generally accepted casualty actuarial techniques appropriate to workers compensation insurance. The firm also cautioned that there is considerable uncertainty surrounding unfunded liability projections and that we ought to be aware of this uncertainty in deciding any long term funding plan.

Our point here is that neither our own statewide business community nor experts in the field are convinced the state fund truly knows the size of the unfunded liability and payment patterns.

Under these circumstances we urge this committee not to

approve a bill which commits the state to a long term funding plan that costs employers over 600 million dollars for a debt of undeterminable size.

(A complete account of Ernst and Young's observations and suggestions is attached to this testimony.)

Members of the committee, we should also point out the bill before you purposely and significantly expands the state's direct control of the Fund's operation. Specifically, Section 8 of the bill would require the Fund's management to follow the Montana Administrative Procedures Act in setting premium rates. Such a degree of oversight is excessive and possibly detrimental to timely and responsive decision making we can and should expect from the Fund's directors. While there has been severe criticism of workers compensation past management, the new management team has given every indication it can and is correcting the problems that have continued to plague the workers compensation system. We believe they ought to have that opportunity to succeed.

The business community believes this bill will channel a lot of employer payroll tax dollars to a liability whose dollar amount is unknown. However, the alternative of taking no action and allowing premium rates to rise on the average of 24% this year and next are equally devastating. Is there another alternative? We believe there is.

It is the business community's hope and our recommendation that this committee consider an alternative which (1) Postpones the imposition of a long term payroll tax and the issuance of bond authority. (2) Provides for the continued

solvency of the State Fund through June 30, 1991 by making a combined use of General Fund appropriations, Fund Reserves, payroll tax and premium rate adjustment. (3) Requires the immediate undertaking of a comprehensive analysis of the Fund by a casualty actuary so that the legislature and the business community of Montana can by early 1991 have a sound estimate of the Fund's true liability upon which a funding strategy can be devised.

Members of the Committee, we thank you for the opportunity to express our views on this extremely important issue.

Exhibit 8
5/23/90 HB 2

Ernst & Young

277 Park Avenue
New York, New York 10172
Telephone: (212) 773-3000
Fax: (212) 773-1996 / 1997
Telex: 177704

May 19, 1990

Montana Chamber of Commerce
P. O. Box 1730
Helena
Montana 59624

Re: Emergency Funding for
State Compensation Mutual Insurance Fund

Dear Sirs:

Thank you for contacting Ernst & Young for actuarial assistance in your evaluation of the proposed funding for the Montana State Compensation Mutual Insurance Fund. Based on the information available for review and the urgency of the issues, I conclude as follows:

1. Whether measured in terms of a present value in excess of $200,000,000 or future payments on the order of $400,000,000, a substantial commitment by the people of Montana is proposed. Accordingly, it is important to consider all aspects and weigh alternatives.

2. Available information on funding needs, risks and alternatives is limited.

   a. The latest calculation of funding requirements does not appear to employ generally accepted casualty actuarial techniques appropriate to workers' compensation insurance. The presentation resembles a pension evaluation.

   There are various areas of specialization within actuarial science. Workers' compensation falls within casualty actuarial science, not pension.

   Although there are no statutorily binding standards for rates used by the State Compensation Mutual Insurance Fund, evaluations using generally accepted casualty actuarial techniques are important information that should be available to the Montana legislature.

Relevant sources of Fund revenues are (A) premiums, (B) payroll tax, (C) investment income, and (D) potential supplemental revenue provided by the legislature analogous to the $20,000,000 in supplemental revenue appropriated for the 1990 fiscal year. Assuming the accuracy of the projections, any combination of funds from these four sources will enable the State Compensation Mutual Insurance Fund to achieve its financial objectives for 1991.

Relative to estimated premium of $95,994,000 and payroll tax of $13,283,000 for 1990, the target of $135,161,000 represents an increase of $25,884,000.

Countrywide increases in workers' compensation rates have averaged approximately 7.5% per year. (Available data does not permit analysis of a rate level increase based on Montana data. The latest National Council on Compensation Insurance filings should be consulted.) Because there was no increase in Fund rates at July 1, 1989, an increase of 15% in current Fund rates would not be out of line with national benchmarks.

Using values from the latest Fund projections, a 15% increase would generate approximately $13,343,000 in additional collected premiums, leaving $12,541,000 to be generated from other sources. By way of comparisons, the latest Fund projection requires a 24.34% rate increase without benefit of additional revenues other than incidental increases in payroll tax.

These are not the only possible funding strategies. A variety of alternative approaches is available and should be considered.

To sum, a long-term financing commitment at this time would be based on weak actuarial foundations. There are alternative financing strategies that would facilitate a decision based on better information.

Ernst & Young is pleased to have been of service in your request for objective appraisal of financing alternatives. We enjoyed working with you and look forward to working with the Montana Chamber of Commerce again.

Sincerely,

Alfred O. Weller

Alfred O. Weller
Senior Manager, FCA, FCAS, MAAA

enc.: Summary of Reviewed Information

ALFRED O. WELLER

ERNST & YOUNG

==========

Alfred O. Weller joined Ernst & Young as a Senior Manager in November 1987. His responsibilities have included management and casualty actuarial consulting, risk management services, and audit support. Among his clients are large and small companies; self-insurers, primary insurers and reinsurers; new ventures and established companies.

Before joining Ernst & Young, Al Weller was Vice President and Chief Actuary of the Risk Management Division of Fred. S. James & Co., Inc. From 1983 to 1985 he was a Vice President of BRI Coverage Corporation. From 1981 to 1983 Vice President of Casualty Actuarial Services Division of Frank B. Hall and Company, Inc. From 1978 to 1981, Director of Actuarial Services at Continental Insurance Companies . From 1971 to 1978, Mr. Weller rose to the position of Senior Actuary on the Executive Staff of the National Council on Compensation Insurance.

Al Weller is a Fellow of the Conference of Actuaries in Public Practice, a Fellow of the Casualty Actuarial Society, and a Member of the American Academy of Actuaries. He has been active in the Committee work and professional activities of these organizations. Currently, he serves on the Board of Directors of the Conference of Actuaries and various Committees. He has been a speaker at the Casualty Loss Reserve Seminar, RIMS meetings, and other professional societies, and he has published articles in the various actuarial publications. He is also a past President of Casualty Actuaries of Greater New York.

Al Weller is a graduate of Swarthmore College and holds a masters degree in mathematical statistics from Indiana University.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #9
DATE 5-23-90
BILL NO. HB2

Proposed Amendments to House Bill No. 2
Third Reading Copy
Montana School Boards Association

May 23, 1990

1. Title, line 22.
Following: "SOLVENCY;"
Insert: "PROVIDING FOR A GENERAL FUND APPROPRIATION OF THE EMPLOYER'S PAYROLL TAX ASSESSED AGAINST SCHOOL DISTRICTS AND LOCAL GOVERNMENTS;"

2. Page 28, following line 9.
Insert: "(3) The tax amounts assessed against school districts and local governments under 39-71-2503 are statutorily appropriated, as provided in 17-7-502, from the general fund to the department to be used to reduce the unfunded liability."

3. Page 31, line 2.
Following: "17"
Insert: "(except the addition of subsection (3) to 39-71-2504)"

4. Page 31, line 11.
Following: "16]"
Insert: "and the addition of subsection (3) of 39-71-2504 by [section 17]"

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #10
DATE 5-23-90
BILL NO. HB 2

HOUSE BILL 2

REPRESENTATIVE SWYSGOOD AMENDMENT

Amendment to House Bill No. 2
Third Reading Copy

The amendment to Page 28, Line 7, accomplishes one very important objective: it mandates that any excess payroll tax money which accumulates must be used for the early payment of bonds. The effect of this mandate is that the bonds could be retired in 15 years if a combination of two things happens. The first is that if the payroll inflation rate exceeds the original estimate of 3.8 percent, then additional funds would be available for early bond redemption. The actual payroll inflation rate since 1969 is 7.5 percent. Given that, an estimate of five percent growth is not out of line. If that five percent growth is obtained, there would be $353 million in tax revenues applied to early bond redemption.

The second issue which could allow for early bond redemption concerns the actual level of unfunded liability. If opponents to HB 2 are correct and the estimate of unfunded liability is too high, than there will be even more money available for the early retirement of the bonds.

The essence of this amendment is to lock up any excess money from either higher tax collections or lower unfunded liability, and mandate that it be applied to early debt reduction.

The moment that the debt is retired the payroll tax can be terminated. In fact, if the committee so desired language could be inserted in the bill which would sunset the payroll tax when the bonds are retired.

It can reasonably be assumed that a 30 year bond issue can be retired in 15 years if this amendment is accepted.

LABOR COMMITTEE

WITNESS STATEMENT

51st LEGISLATIVE SESSION

DATE: 5-23-90

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #1
DATE 5-23-90
BILL NO. HB2

****

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY !

****

NAME: Leon Stalcup Date: 5-23-90

ADDRESS: 1635 W Kent Missoula MT 59801

PHONE: 721 2895

REPRESENTING WHOM: Montana Restaurant Association

APPEARING ON WHICH PROPOSAL: HB 2

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: Montana does have a problem with Workers Comp but to commit 660 million Dollars to solve a 220 million dollar problem seems to be going too far. Where did the problem come from? Which specific industries caused the problem? Why are all businesses asked to pay on a payroll basis rather than risk basis? If there has been a substantial monitary subsidy to specific industry then These should be funded, as are all other social programs, through the general fund. Take the time to study this issue, do not act hastely, wait until the regular session to give this issue the time it needs.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 12
DATE 5-23-90
BILL NO. HB2

PYRAMID MOUNTAIN LUMBER INC.
(406) 677-220
P.O. Box 549 • Seeley Lake, Montana 5986

5/24/90

TO: Senate Labor Committee

FROM: Roger Johnson, President
PYRAMID MOUNTAIN LUMBER, INC.

RE: Proposed Workers Compensation Legislation

The last legislative session made major strides towards resolving our troubled workers compensation system. Unfortunately, it was too little too late.

The proposed legislation does nothing to address the problem. If the State of Montana desires to continue in the business of workers compensation, somebody needs to understand and address the problem. If not, the unfunded liability will continue to grow.

I request that a decision not be made in the special session on this extremely critical and complex issue. A problem of this magnitude that is complicated with rate inadequacies deserves more than a quick fix.

Sincerely,

Roger D. Johnson
President
PYRAMID MOUNTAIN LUMBER, INC.

SENATE STANDING COMMITTEE REPORT

May 24, 1990

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration House Bill 2 (third reading copy -- blue), respectfully report that House Bill 2 be amended and as so amended be concurred in:

Sponsor: (Senator Thayer)

1. Title, lines 9 through 23.
Following: "DATE;" on line 9
Strike: remainder of line 9 through "2020;" on line 23
Insert: "REQUIRING THAT THE STATE FUND SHALL CHARGE AMOUNTS SUFFICIENT TO PROVIDE REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE; REQUIRING THAT THE STATE FUND SHALL INCREASE PREMIUM RATES BY 7 PERCENT TO ASSURE SUFFICIENT REVENUE TO SATISFY CLAIMS AS THEY BECOME DUE AND PAYABLE;

2. Title, page 2, lines 2 and 3.
Strike: "39-71-116," on line 2 through "THROUGH" on line 3
Insert: "39-71-2311 AND"
Following: "39-71-2316," on line 3
Insert: "MCA;"
Strike: "39-71-2321,"

3. Page 2, lines 4 through 7.
Strike: all of line 4 through "DATE" on line 7
Insert: "AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

4. Page 2, following line 7.
Insert: "STATEMENT OF INTENT

The legislature recognizes that the unfunded liability currently existing in the state fund cannot be fully addressed at this time. The legislature further recognizes that the unfunded liability will have to be addressed from time to time in future legislative sessions; that other sources of revenue may have to be obtained from time to time to assist in reducing the unfunded liability; and that because of the current state of the economy and because of the current premium rates being charged employers, there should not be a substantial increase in premium rates at this time."

5. Pages 2 through 31.
Strike: everything after the enacting clause
Insert: "NEW SECTION. Section 1. Purpose of separation of state fund liability as of July 1, 1990. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other

methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to treat claims that arise on or after July 1, 1990, is to separate the liability of the state fund for the purpose of establishing premium rates on the basis of whether a claim arose before July 1, 1990, or on or after that date.

Section 2. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan is established under 39-71-431 and is in effect. ~~The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves.~~ For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record."

Section 3. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund -- rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications ~~so that the state fund will be neither more nor less than self-supporting.~~ in amounts sufficient to provide revenue to satisfy claims as they become due and payable. However, in order to assure this cash flow in the future, the state fund shall increase total premium rates for the fiscal year commencing July 1, 1990, by 7% of the immediately preceding

fiscal year's total premium. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated and adequate actuarially determined reserves are determined.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund."

NEW SECTION. Section 4. Settlement of fixed benefit claims that arose prior to July 1, 1990. (1) The state fund shall offer a lump-sum settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability, other than liability for medical benefits, and has fixed benefits. The lump-sum settlement must be 80% of the amount of liability accepted by the state fund, discounted to present value. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability, other than liability for medical benefits, in exchange for accepting the lump-sum settlement. The claimant shall accept a lump-sum settlement in writing before November 1, 1990, or the settlement offer is void.

(2) If the lump-sum settlement offer made pursuant to subsection (1) is not accepted, the lump-sum law in effect on the date of the injury applies.

NEW SECTION. Section 5. Request for proposals for claims settlement. The state fund shall prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim that arose before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal.

NEW SECTION. Section 6. Exemption from notice requirement. The 30-day notice requirement imposed under 33-15-1106 does not apply to rate changes effective July 1, 1990, that occur in response to the provisions of [this act].

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval."

BE CONCURRED IN AS AMENDED

Signed: _____
Gary C. Aklestad, Chairman

hb000201.524

4-C. 19°
5-1-09
1:p.m.

MINUTES

MONTANA SENATE
51st LEGISLATURE - SECOND SPECIAL SESSION

FREE CONFERENCE COMMITTEE

Call to Order: By Chairman Gary Aklestad, on May 24, 1990, at 4:45 p.m. in the State Capitol, Room 405

ROLL CALL

Members Present: Senator Aklestad, Senator Gene Thayer, Senator Bill Norman, Representative Glaser, Representative Hal Harper, Representative Jerry L. Driscoll

Members Excused: none

Members Absent: None

Staff Present: John McMaster, Mary McCue, and Tom Gomez

Announcements/Discussion: The Senate usually chairs the conferees. There must be 2 votes from each house to pass anything. Only the conferees will enter into the discussion of HB 2. If Committee members desire to ask someone in the audience for statistical information, that is permissible. Discussion will begin on the grey bill.

FREE CONFERENCE COMMITTEE ON HOUSE BILL 2

Chairman Aklestad explained by using the title and parts of HB 2 and SB 5 we're able to conform to with the call of the special session. All the committee members received a letter from Insurance Commissioner Andrea Bennett.

Rep. Harper reported that the House rejected the Senate amendments. They did like the idea of separating the funds. He offered some amendments that included bonding at a lower level.

Senator Thayer asked what is the rate of increase?

Rep. Glaser stated that the ongoing rates would be actuarily sound. He said that Drew James thinks that the Workers' Comp people will have to increase the rate similarly to the Senate's proposal.

Rep. Driscoll thinks that the present rates must be adequate for current risk or it doesn't work. The account

receivables aren't cash so it depends on what month it is if you run out of cash.

Rep. Harper wants the fund to use every method to retire the unfunded liability more quickly and cheaply, by using lump sum type settlements and independent claims adjustors to speed the process. The cash flow approach eliminates the possibility of lump sum settlements.

Sen. Thayer explained that the abuses of the buy out system triggered SB 15 which eliminated lump sum buy outs. Caution is needed in that situation.

Rep. Glaser stated the Ingram Decision got us back into the lump sum settlement.

Senator Aklestad said the Senate objected to the bonding and all the amendments that were put into HB 2 by the House, departments, various groups and legislators.

Rep. Driscoll responded if you don't like our bonding proposal, where can we find money?

Senator Thayer explained that bonding borrows money to pay money that hasn't come due yet. There is an interest charge to do that. The other proposal is set so that you pay the bills as they come due. That's the way the state operates most of the funds. Most of us don't want to lock ourselves into a long term bonding situation. This current proposal eliminates a 24.5% increase on July 1 and gives a vehicle to continue the fund and time to find other solutions.

Rep. Glaser stated the Coal Trust Fund generates revenue around 10.5%. We can borrow at 7% or 7.5%.

Senator Thayer asked Norm Grosfield to comment on the area of borrowing money to pay for bills that aren't due.

Mr. Grosfield said that the unfunded liability is a liability with no interest costs. If you buy into a long term indebtedness program you are tying employers into a long term debt using interest money on that debt. You can address this unfunded liability from time to time, if you keep flexibility in the system. Many state funds operate on cash flow basis. There are 19 state funds and they go up and down in there indebtedness.

Rep. Driscoll had figures run that showed the current premium plus 7% and using cash of $35,000,000, in 1994 you will be broke and have $261,000,000 in unfunded liability. The unfunded liability does grow. People are kept on temporary total too long, some prior to 1987. Claims aren't

settled. Medical payments are too high. The Committee had lengthy discussion regarding spread sheets with the projected expenditures.

Senator Aklestad asked if on page 2, grey bill, the department has growth plus 7% in that language. That's the intent the Senate would work. Does the language do that and does the House agree? Senator Thayer explained that the state fund people asked for 7% be put in the bill.

Rep. Driscoll referred to the letter from the State Auditor that states one of her assigned duties is to audit the state insurance fund. If we don't restrict that duty in this bill she will shut the fund down. He believes that bonding is the answer. The committee discussed locking in on bonding and all the problems associated with the Worker's Comp fund. The Ingram decision dictates that a supply of money should be available and the bonding adds another area. The cash flow basis was put forth as the way other states operate their funds and it allows legislative action as the need arises. Other states are using coal tax reserves and rate increases of 60% to solve this same problem. The committee showed that interest could be earned on the borrowed money at a higher rates than the bonds' interest.

Senator Thayer explained that they pursued the idea of selling the fund two years ago and was told that probably no company would want to buy the whole large insurance business. Most insurance companies spread their risks out among different states because they don't want that much action in one state. Senator Thayer wondered why the need for $120,000,000? Rep. Harper said they were willing to negotiate on the amount. Then we need to decide what is the cheapest way to capitalize the new fund. The idea of taxing employees, income tax or the coal tax was mentioned and basically all were rejected.

The Senate agrees that it would be a good idea to get a supply of money for lump sum payments but they do not agree to a bonding proposal. Is there a concern about the state auditor? Should we handle that problem at this time if we are unable to do anything? Representatives Glaser and Driscoll and Senator Norman want to keep the state auditor auditing the insurance fund.

The committee agreed on these points.

1. Separate the fund.
2. Provide enough money for the fund to operate.
3. Enough money to retire some of the old claims. Would you allow part of the new rates to pay off old liability?

The Senate offered these proposals.

1. Remove the sunset provision on the payroll tax. It goes to July 1, 1991, which is another source of income for a longer period of time.

2. Buy down the old claims. Put language in HB 2 that would tell the Department to contact those individuals that they could buy out and write contracts with those individuals that would be presented to the 1991 legislative session, indicating how many and how much potential there is for buy out. The contract would be subject to legislative approval to obtain the money. The legislature could then see what the cost would be. The percentage of buy out should be recommended at this time to the Department. Then we could get the money to do that buy out. The Department could continue to examine the buy out potential.

These proposals just require a majority vote, where a bonding proposal requires a 2/3 majority. These proposals would save the fund several million dollars.

NOTE: The committee recessed at 6:25 p.m. The committee reconvened at 9:10 a.m. on May 25, 1990. All members and staff were present.

Senator Aklestad asked the committee for discussion. Rep. Driscoll stated that he met with Senator Thayer, Legislative Auditor Dave Lewis and several other persons.

1. He proposed that they have a true separation of the fund as of July 1, 1990, so they will have the old business and the new business. Of the present money $12,000,000 will stay with the new business. Whatever else is there the old business will have. The accounts receivable for April, May, and June of 1990 will go to the old business. The payroll tax for those same months will go to the old business.

2. Any accident that happened before July 1, 1990, is the responsibility of the old business. Any accident after that date is the responsibility of the new business.

   On the date the separation occurs the new business will be bringing in $100,000,000 the first year and $110,000,000 the second year from premiums. On claims between July 1, 1990, to July 1, 1991, they will probably spend $20,000,000. The other $80,000,000 will be loaned to the old business at 7.5% interest fixed in law.

3. The payroll tax will remain in effect until the old business is paid. The auditor brought up cash flow charts and it cash flows. The investments will show up on the new business ledger, but it will be a loan to the old business, and it will be paying interest. The new business will get their money back and will have reserves.

4. Rep. Driscoll stated that the date the payroll tax and the payroll premiums are due, are not the same. The payroll tax is due the last day of July. The payroll premiums are due Aug. 20. He wants both dates the same.

5. The State Auditor will be out of the picture. The Ingram Decision cost 7% in additional premiums. Some class codes will get a cut and some will be raised, but the average will be 7%.

6. The Montana Administrative Procedures Act is included in the plan. The public has the right to know and MAPA guarantees that protection.

7. The lump sum provision would be taken out because there is no money. Present law stipulates that lump sums are paid out in the best interests of the claimant. Thus you have to have a lawyer and an economist determine what is the best interest of the worker.

8. A financial audit by the legislative auditor would be done every year.

A clearer picture of the success of this plan will emerge in the 1993 session.

The committee asked the department how they will comply with the MAPA regulations? Mr. Murphy explained the Department's position regarding MAPA regulations. Regarding the outline of how rates are set they can comply. Their concern is with a contested case hearing or a particular rate. They have a court case called Sky Country that says we have pecuniary interest and we can't hold a contested case hearing. The formula methodology of establishing rates is easily accomplished. The public would be aware of how rates are established, but the employer wouldn't be able to have a protest. The fear is that the employers who have their rates raised will come in and destroy the rate plan.

Rep. Harper asked why the Administrative Codes Committee wants MAPA to be followed by the fund?

John McMaster reported that the committee voted unanimously that the state Workers' Comp fund is subject to MAPA. They also voted unanimously to request the interim committee on Workers' Compensaion to develop a bill that specifically states that the state Worker's Comp fund is subject to MAPA. When HB 2 was in the drafting stage, Rep. Glaser requested it be put into HB 2. The Worker's Comp staff contend that there is a case that says that since the state fund has a pecuniary interest in setting premiums and rate making, if the state fund sits as an administrative law judge in a contested case hearing with an employer who's challenging rates, they have a conflict of interest. Someone else in state government could sit as an administrative law judge to avoid conflict of interest in contested rate cases. The current law says that the Attorney General is the attorney for the state fund and shall help it out when it needs help. MAPA currently says you have the contested case hearing. There is a good reason why the legislature passed the law saying that in the rate making context you have the right to a contested case hearing.

The committee wants the department to be able to make rate changes and they do not have to notice the rate changes.

John McMaster explained that MAPA was primarily written to lock state agencies into the procedure for adopting regulations, rules and policies for whatever part of the public the agency works with. They have to do it using the procedures set out in MAPA. When you impose things on the public that become law, the public has certain rights regarding the imposing of those laws.

Senator Thayer explained that the Workers' Comp fund is not the same thing because any employer can withdraw from the fund and go elsewhere for insurance. The rates are presently set under the guidance of NCCI and actuaries. His suggestion is to completely strike any reference to MAPA. John McMaster explained the language in HB 2 now says you do not have to have a full blown rule making procedure each time you change a rate. The committee instructed Mr. McMaster and the Department of Labor to draft clear language in this regard.

Rep. Harper suggested that we take these proposals and concepts back to our caucuses. The committee agreed in concept with these general points. John McMaster was instructed to draft amendments for these concepts. John McMaster asked for clarification on the point of whether the state fund has to follow the rule making procedure every time they raise the rates. No. Do you want an amendment saying that an employer does not have the right to a contested case hearing to challenge his rate? Yes.

NOTE: The committee adjourned at 10 a.m. and agreed to reconvene at 11:25 a.m. All members and staff were present.

Senator Aklestad stated we now have a version of both bills and the committee's ideas as expressed earlier. We will go through these amendments (hb000203.agp) and on small issues we'll have a consensus and major issues we'll have a motion.

Regarding the actuarily sound idea versus the cash flow basis do we have to put a length of time on it, like 8 years? With the separation of old and new claims, there should not be any new business unfunded liability the first year. The Department must run the new company actuarily sound. Rates are set to be actuarily sound, then a court decision can change the whole picture. The unfunded liability should be retired and subjected to future rate making and retired over a 25 or 30 year period, rather than an 8 year period. The old business will not be actuarily sound, but the new plan must be.

Consensus that the new business operates on an actuarily sound basis determined at this point in time, which is approximately 8 years. The old side of the business could not be used to determine whether the new side was actuarily sound. Presently they use all the claims liability to figure the actuarily sound basis. The rate making is thrown off when using the old claims. With separation the actuary won't look at the debts incurred before July 1, 1990, when figuring rates or auditing. Actuarily sound principles only applies to the future business. If a court case throws the fund into debt, should there be a 1, 2, or 8 year basis? John McMaster responded that the actuarily sound principles already designed will be used. This bill mandates that the department set rates and change them as necessary to pay claims and have reserves. That principle applies at any given point in time. The Department must respond to any Court decision in an actuarily sound manner. According to spread sheets that have been prepared, on July 1, 1991, there should be $92,000,000 in investments. We should reserve funds for future claims. Rate setting should be done each year and that is probably sufficient.

Senator Thayer asked that the committee leave the title until last and work on the body of the bill first.

Senator Aklestad called attention to page 2, NEW SECTION it says "the state fund may loan $12 million" to the new business. After discussion, the committee decided that the intent is that $12 million will be granted, not loaned, to the new business.

Chairman Aklestad warned committee members to ascertain

which facts they liked in this bill during the next hour so they can work the document over properly, clearly and concisely. With that he adjourned at 12:15 p.m. until 1:15 p.m.

NOTE: Committee convened 1:15 p.m. with all members and staff present. Some committee members had bill # hb000203.agp and some had # hb000203.jam. Chairman Aklestad had version .agp and that's the copy we'll use.

Rep. Driscoll said, "Mr. Chairman on Section 1, page 2, (b) the administration of paying of claims. In the spread sheet we're using we use $3 million dollars and this doesn't say that, so Mr. Chairman, I want to add language to that section that says the administration can separate out the administration of the old versus the new but in the first 5 years they can not charge the old fund more than $3 million a year administrative costs. People want language in there how much administrative costs are going to charge back against the old fund. I would like to see language say that the administration of the old fund cannot exceed $3 million dollars a year. They can't back charge them more than $3 million a year for the first 5 years." Chairman Aklestad called for discussion 3 times.

Rep. Driscoll moved that on page 2 NEW SECTION. Section 2. (c) should allow $3 million for administrative expenses. The motion carried.

The committee discussed the costs of audits. Scott Seacatt said a yearly audit costs $32,000.

Rep. Driscoll moved that the words "may loan" on page 2 New Section 3. be changed to "shall transfer" $12 million. In the same section after July 1, 1990, delete where it says, "Before July 1, 1991, the total amount borrowed during ....." (end of paragraph)

In new section 5 there was discussion of how many auditors will be involved. On page 5 Section 7 the committee discussed premium rate setting extensively, and decided the language was correct.

On page 6, Section 9, line 3 Senator Thayer moved that the words "a nonprofit, independent public corporation" be reinstated into the bill. Then strike the words, "The state fund exists as a domestic mutual insurer as defined in 33-3-102.". Motion carried.

After discussion the committee agreed to the deletions to Section 10 (amending Section 39-71-2314, MCA) which takes away the insurance commissioner's authority over the state

plan.

Senator Aklestad asked about the assigned risk plan authorized in Section 10, particularly the amount of money needed to implement it. Mike Micone, Director of Department of Labor and Industry, has not decided whether to have an assigned risk plan and has until December, 1990, to decide. After the decision he has 6 months to implement the plan and the amount of money to do that is $3 million of the premium tax. Mr. Micone has been looking at other states assigned risk plans and the NCCI's plan and many have financial troubles. He hasn't determined if we need it in the state of Montana and, if so, how to operate it. He leans toward having NCCI administer it if he goes that way.

Senator Thayer moved to strike all the language in Section 10, (2). The committee discussed whether they are a state agency or a separate insurance company. Motion failed. Rep. Harper moved to strike "is a state agency and" and keep the rest of Section 10 (2). Motion failed. Rep. Harper wants MAPA to cover the plan.

Mike Micone explained SB 428 was a vested mutual insurance corporation law. To remove them as far as possible from being a state agency. It allows the state fund to devise management techniques necessary to deal with employees not as state employees. If they are a state agency the state fund has just negotiated a labor agreement. They operate as closely to an insurance company as possible, with claims review meetings which might be considered a public meeting and in insurance company setting it's a private business meeting. Their negotiations and liability discussions are more private.

Rep. Driscoll moved that Section 10 (2) say, "The state fund is subject to laws of the state of Montana unless they are exempt from that law." Motion failed.

Rep. Driscoll moved that Section 11 (2) be kept in the bill in it's entirety. The entire paragraph, including the stricken language and the bond language, be kept. Motion carried.

The committee asked Mr. Murphy to explain premium rates and classifications. Mr. Murphy said this section talks about setting premium rates for different classifications. After much discussion Rep. Harper moved that Section 12 (6) add the following language after self-supporting. "Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not

follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate." Motion carried.

The committee's intent is aimed at how the department sets rates, not what the rate is, and the employer can appeal his classification but not the money assigned the classification. There was lengthy discussion regarding the department being covered by the Montana Administrative Procedures Act. John McMasters explained that amendment makes them subject to MAPA except for rate making and changing classifications.

Rep. Harper moved that we reconsider the language in Section 10 (2). Motion carried.

Rep. Harper wants Section 10 (2) to read, "The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2,3,4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

The committee discussed Section 13, Section 14, Section 15 and approved them.

Senator Thayer discussed Section 16 (1) line 3 where it says "accidents". What about occupational disease? Mr. McMaster explained that near the end of the bill there is a provision that takes care of that. The committee approved Section 16.

Rep. Driscoll moved that on page 9 Section 17 (1) (a). After the words July 1, 1990. strike, "In each regular session.....be repaid with interest." Motion carried.

Rep. Driscoll moved that on page 9 Section 17 (3) (a) the first line read as follows. "On or before the last day of May 20, August 20, November 20, and February 20," the premiums will be due. That is when the tax is due and both will coincide. That would be when interest would be due. Motion carried.

Senator Thayer moved to strike section 17 (6) the words "including the workers' compensation division, and". Motion carried.

Senator Aklestad asked why the NEW SECTION. Section 18? This section states that wherever it says in this bill injury resulting from an accident that statement includes the meaning disablement from occupational disease for purposes of administering this law and the occupational disease act. The committee approved this addition.

In New Section 20 Rep. Driscoll moved to strike the words "state auditor" and insert "attorney general". Motion failed.

In New Section 21 Rep. Driscoll moved to amend (1) "If funds are available, the state fund may offer a negotiated claim settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability and has fixed benefits. Then strike "The negotiated claims settlement must be 80% of the amount of liability accepted by the state fund, discounted to present value."

Rep. Driscoll requested the addition to the law that states, "The negotiated claim settlement may be paid in a fixed amount without any justification by the claimant." The committee agreed.

After discussion, the committee approved New Section 22.

The committee approved Section 23. Rep. Driscoll moved to amend, Section 10, Chapter 664 Laws of 1987 for the effective date. Motion carried.

The committee approved New Sections 24 Appropriation, 25 Saving Clause, 26 Severability, 27, Codification instruction.

The committee deleted New Section 28 as it didn't apply in this bill.

The committee approved New Section 28 Effective Dates -- applicability.

The committee deleted New Section 30 Termination.

Senator Thayer brought attention to the words "injuries resulting from accidents" versus "occupational disease". Should the term be just "claims"?

Lengthy discussion regarding the Montana Administrative Procedures Act and how it should apply to the Worker's Comp Insurance Fund ensued. Some of the main points were:

1. Should employers have the right to dispute their rate?

With private carriers available to them, they could simply switch insurance plans. Reasonable public input to the Board should be included.

2. SB 428 made the fund as private as possible and separated them from being a state agency to being an insurance company. SB 428 did include the public in rate making policies. Does the committee need to strengthen that portion of the law?

Rep. Harper moved the compromise in the .jam page 6 (2) to strike "is a state agency and". Discussion followed whether to put the fund tightly under MAPA or just the rate making procedures. Some committee members want the fund administrators subject to the general procedures all other state administrators abide by.

Senator Thayer offered an amendment on Page 7 (6) that says that the State fund does not follow NAPA for any purposes, except for the rate formula. Senator Norman asked Mr. Murphy to explain the ramifications of this bill with regard to the MAPA sections.

Mr. Murphy responded if you adopt the provision on page 6, then go to page 7 the amendment of Senator Thayer's on how they operate. They don't mind doing the rates, which they do now anyway. The claims operation and contested case hearings operation would possibly be hampered. That is the concern.

Mr. McMaster explained that the amendments offered by Senator Thayer say the state fund does not follow MAPA for anything for any purpose, except for rate making procedures. The committee needs to decide if the plan is subject to the rule making provisions of MAPA and does MAPA apply to contested cases.

The committee is trying to exclude them from MAPA on contested cases and on claims. Rep. Harper understands they are not subject to MAPA in setting premium rates and they are not subject to MAPA in contested cases or when employers are contesting their premium rate. Rep. Glaser said we should exempt them when they change premium rates as the methodology is already in MAPA.

Rep. Harper's motion to amend Section 10 (2) carried.

Senator Thayer moved his amendment (see Exhibit 1). Motion failed.

Rep. Harper moved a compromise amendment on page 7 (6) after parts 2 through 4. add the following: " After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, Chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate." Motion passed.

ADJOURNMENT

Adjournment At: 5:00 p.m. May 25, 1990

Senator Gary Aklestad, Chairman

GA/dh

Amendments to House Bill No. 2
Reference Copy
Introduced by Senator Thayer

Free Conf. Committee on HB2

EXHIBIT NO. 1
DATE 5-25-90
BILL NO. HB 2

1. Page 13, line 11
Following: line 10
Insert: "Section 30. Section 2-4-102, MCA is amended to read: "2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means any agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons, except that the board shall be subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules shall be published in the administrative rules of Montana and Montana administrative register;

(ii) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the State Compensation Mutual Insurance Fund, except that the State Fund shall be subject to the requirements of adopting rules for the initial process, procedure, formulas and factors for setting premium rates for classifications, and its rules shall be published in the Administrative Rules of Montana and Montana Administrative Register;

(b) "Agency" does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the administrative rules of Montana.

(4) "Contested case" mans any proceeding before any agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means any person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing herein shall be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means any individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(9) "Register" means the Montana administrative register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of pulic works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 2-4-306 and shall be published in the administrative rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. Such interpretation lacks the force of law.

Renumber: subsequent sections

Free Conference Committee
on House Bill 002
Report No. 1, May 25, 1990

Mr. President and Mr. Speaker:

We, your Free Conference Committee on House Bill 002 met and considered:

We recommend that House Bill 002 (reference copy -- salmon) be amended as follows:

1. Title, page 1, line 23.
Following: "~~2020;~~"
Strike: remainder of line 23 through "DATE" on page 2, line 13
Insert: "PROVIDING MONEY FOR INITIAL OPERATING EXPENSES FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCUR ON OR AFTER JULY 1 1990; AUTHORIZING LOANS FROM RESERVES OF THE STATE FUND FROM PREMIUMS ATTRIBUTABLE TO WAGES PAYABLE ON OR AFTER JULY 1, 1990, FOR PAYMENT OF CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990; ESTABLISHING SEPARATE FUNDING AND ACCOUNTS FOR CLAIMS REPRESENTED BY THE UNFUNDED LIABILITY AND CLAIMS REPRESENTED BY NEW BUSINESS; PROVIDING FOR INCREASED LEGISLATIVE OVERSIGHT OF THE STATE FUND; CLARIFYING THE STATE FUND'S DUTIES; PROVIDING THAT THE STATE FUND MAY NOT ISSUE BONDS; ENSURING COMPLIANCE WITH THE MANDATE THAT THE STATE FUND SET PREMIUMS FOR NEW BUSINESS AT A LEVEL SUFFICIENT TO ENSURE SOLVENCY; REMOVING THE TERMINATION OF THE WORKERS' COMPENSATION PAYROLL TAX; PROVIDING A SPECIAL METHOD OF OFFERING NEGOTIATED SETTLEMENTS FOR CLAIMS ARISING PRIOR TO JULY 1, 1990; PROVIDING FOR COORDINATION OF THIS ACT WITH THE OCCUPATIONAL DISEASE ACT OF MONTANA; ALLOWING THE STATE FUND TO REQUEST PROPOSALS FOR THE SETTLEMENTS OF CLAIMS ARISING PRIOR TO JULY 1, 1990; APPROPRIATING MONEY TO THE DEPARTMENT OF REVENUE FOR ADMINISTERING COLLECTION OF THE PAYROLL TAX; AMENDING SECTIONS 33-1-102, 39-71-116, 39-71-2311, 39-71-2313 THROUGH 39-71-2316, 39-71-2321, 39-71-2323, 39-71-2501 THROUGH 39-71-2504, MCA; AMENDING SECTION 10, CHAPTER 664, LAWS OF 1987; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE"

2. Page 3, line 4 through page 7, line 15.
Strike: everything after the enacting clause
Insert: "NEW SECTION. Section 1. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous

attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to: (a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) extend the payroll tax imposed by 39-71-2503 and dedicate the tax money first to the repayment of loans given under [section 4] and then to the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased.

NEW SECTION. Section 2. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in [section 4] and 39-71-2316(9), premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources

provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

NEW SECTION. Section 3. Initial operating expenses for claims for injuries resulting from accidents that occur on or after July 1, 1990. During the fiscal year beginning July 1, 1990, the state fund shall transfer $12 million from money deposited under 39-71-2321 in the state fund before July 1, 1990, to the account created by 39-71-2321 for the administration and payment of claims for injuries resulting from accidents that occur on or after July 1, 1990.

NEW SECTION. Section 4. Use of payroll tax proceeds -- loans. Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying loans given under this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with other funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund, through its board of directors, may advise the board of investments that additional funding is necessary. The board of investments may loan, from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990, amounts necessary for payment of claims for injuries resulting from accidents that occurred before July 1, 1990. The loans must bear interest at 7 1/2%.

NEW SECTION. Section 5. Legislative audit of state fund. The legislative auditor shall annually conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

Section 6. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the

following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims, payment of benefits, setting of reserves, furnishing of services and facilities, and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

~~(1)~~(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(2)~~(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections ~~(2)(a)~~ (3)(a) through ~~(2)(d)~~ (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections ~~(2)(a)~~ (3)(a) through ~~(2)(e)~~ (3)(e) of this section, exists).

~~(3)~~(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

~~(4)~~(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(5)~~(6) "Days" means calendar days, unless otherwise specified.

~~(6)~~(7) "Department" means the department of labor and industry.

~~(7)~~(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(8)~~(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

~~(9)~~(10) "Invalid" means one who is physically or mentally incapacitated.

~~(10)~~(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

~~(11)~~(12) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(12)~~(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(13)~~(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

~~(14)~~(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

~~(15)~~(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

~~(16)~~(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

~~(17)~~(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(18)~~(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(19)~~(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe

for use for the particular purpose for which they are furnished.

~~(20)~~(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(21)~~(22) "Year", unless otherwise specified, means calendar year."

Section 7. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a mutual insurance fund. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan ~~is~~ established under 39-71-431 ~~and~~ is in effect. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ~~fund~~ ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record."

Section 8. Section 39-71-2313, MCA, is amended to read:

"39-71-2313. State compensation mutual insurance fund created. There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. ~~The state fund exists as a domestic mutual insurer as defined in 33-3-102.~~"

Section 9. Section 39-71-2314, MCA, is amended to read:

"39-71-2314. State fund a ~~mutual insurance carrier~~ -- assigned risk plan. ~~(1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of~~

~~domestic mutual insurers in this state. However, the reserve requirements set forth in Title 33, chapter 2, part 5, and the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1.~~

~~(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of this part.~~

~~(3)~~(1) If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.

(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (except as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

Section 10. Section 39-71-2315, MCA, is amended to read:

""39-71-2315. Management of state fund -- powers and duties of the board. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director."

Section 11. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of the state fund -- rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) except as provided in [section 21], enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until ~~the unfunded liability of the state fund is eliminated and~~ adequate actuarially determined reserves are ~~determined~~ set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund."

Section 12. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) The loan proceeds given to the state fund under [section 4] must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1,

1990."

Section 13. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in state fund -- payment of dividends. ~~If~~ Subject to the provisions of 39-71-2316(9), if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus, ~~such liabilities to include necessary reserves, which~~ and if the excess may be ~~divided~~ refunded safely, then the state fund may declare a dividend. ~~in the manner as the~~ The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 14. Section 39-71-2501, MCA, is amended to read:

"39-71-2501. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of ~~labor and industry~~ revenue provided for in ~~2-15-1701~~ 2-15-1301.

(2) "Employer" has the meaning set forth in 39-71-117.

(3) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(4) "State fund" means the state compensation mutual insurance fund.

(5) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(6) "Tax account" means the workers' compensation tax account created by 39-71-2504."

Section 15. Section 39-71-2502, MCA, is amended to read:

"39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and ~~is projected to~~ it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Therefore, all employers who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability."

Section 16. Section 39-71-2503, MCA, is amended to read:

"39-71-2503. Workers' compensation payroll tax ~~-- penalty~~. (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to ~~0.3%~~ 0.28% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28% Of the employer's payroll in the preceding week. This payroll tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. The department must report past and projected future tax proceeds to the legislature, which shall consider the report and determine the tax rate necessary for repayment of loans with interest.

~~(b) The tax is due and payable following the end of each calendar quarter, commencing with the quarter ending September 30, 1987.~~

~~(c) The tax must be paid to and collected by the department. The department shall prepare appropriate returns to be filed by each employer or insurer with the payment of the tax.~~

~~(d)~~(b) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

~~(e) Taxes not paid when due bear interest at the rate of 1% a month. The employer shall also pay a penalty equal to 10% of the amount of the delinquent tax.~~

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) (a) On or before the 20th day of May, August, November,

and February, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a).

(c) A tax payment required by subsection (1)(a) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who willfully fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on [the effective date of this act] or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

~~(3)~~(7) ~~Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122~~ The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department."

Section 17. Section 39-71-2504, MCA, is amended to read:

"39-71-2504. Workers' compensation tax account. (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation loan repayment account.

(2) All collections of the tax, interest and penalties on

the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All such money deposited in the workers' compensation tax account must be credited to the workers' compensation loan repayment account to the extent necessary to pay the principal of and interest due on workers' compensation loans issued under [section 4]. The balance in the workers' compensation loan repayment account must be credited to the tax account within the workers' compensation tax account and ~~are~~ is statutorily appropriated, as provided in 17-7-502, to the ~~department~~ state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

NEW SECTION. Section 18. Coordination with Occupational Disease Act of Montana. For purposes of [this act] and the administration of Title 39, chapter 72, a reference in [this act] to an injury resulting from an accident or to a claim for an injury resulting from an accident includes a disablement as defined in 39-72-102(4).

NEW SECTION. Section 19. Transfer of accounts receivable. The department of revenue is not responsible for the collection of an account receivable it takes over from the department of labor and industry on [the effective date of this section] if the account is more than 720 days past due or is an account of an employer that is no longer in business. Such accounts must be transferred to the state auditor for collection.

NEW SECTION. Section 20. Settlement of fixed benefit claims that arose prior to July 1, 1990. (1) If funds are available, the state fund may offer a negotiated claim settlement to each person who has a claim that arose before July 1, 1990, for which the state fund has accepted liability, other than liability for medical benefits, and has fixed benefits. Each settlement offer must contain a provision granting the state fund a full and unconditional release of liability, other than liability for medical benefits, in exchange for accepting the negotiated claim settlement. The claimant shall accept a negotiated claim settlement in writing before November 1, 1990, or the settlement offer is void. The negotiated claim settlement may be paid in a fixed amount without any justification by the claimant.

(2) If the negotiated claim settlement offer made pursuant to subsection (1) is not accepted, the lump-sum law in effect on the date of the injury applies.

NEW SECTION. Section 21. Request for proposals for claim

settlement. The state fund may prepare a request for proposals for contracting with private claims adjusters for settling the claims of persons whose benefits have not been determined under a claim that arose before July 1, 1990. The request for proposals may be based upon a dollar amount of unsettled claims or upon a percentage of claims for which benefits have not been determined. The state fund may not enter into a contract based upon a proposal until it has reported the results of the proposals to the 52nd legislature and has received legislative authorization to enter into a contract based upon a proposal.

Section 22. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required -- exceptions -- health service corporations -- health maintenance organizations -- governmental insurance programs. (1) No person shall transact a business of insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, ~~part~~ parts 21 and 23, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political

subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 23. Section 10, Chapter 664, Laws of 1987, is amended to read:

"Section 10. Effective date ~~-- termination~~. This act is effective on passage and approval ~~and terminates June 30, 1991~~."

NEW SECTION. Section 24. Time for filing tax returns. For the period from July 1, 1990, through June 30, 1991, each employer subject to the tax provided for in 39-71-2503 shall file, on or before the 20th day of May, August, November, and February, a return in the form and containing the information required by the department of labor and industry.

NEW SECTION. Section 25. Appropriation. There is appropriated $124,131 from the general fund to the department of revenue for the fiscal year beginning July 1, 1990, to be used to convert state fund and department of labor and industry data relating to the collection of the employer's payroll tax and to prepare a system for the collection of the tax by the department of revenue.

NEW SECTION. Section 26. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 27. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 28. Codification instruction. [Sections 1, 2, 4, and 5] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, 4, and 5].

NEW SECTION. Section 29. Effective dates -- applicability. (1) [Sections 1 through 13, 15, 17, 18, 20 through 28 and this section] are effective July 1, 1990.

(2) The change in the tax rate in 39-71-2503(1)(a) and the amendment inserted at the end of 39-71-2503(1)(a) by [section 16] are effective October 1, 1990, and apply to wages payable on or after July 1, 1990.

(3) [Sections 14 and 19] and all other amendments to 39-71-2503 contained in [section 16] are effective July 1, 1991.

And that this Conference Committee Report be adopted.

For the Senate:

Sen. Aklestad, Chairman

Sen. Thayer

Sen. Norman

For the House:

Rep. Harper, Chairman

Rep. Driscoll

Rep. Glaser